



Global Developments in Religious Freedom and Equal Treatment

February 2014

Dear Friends:

Welcome to the first issue of the International Network of Civil Liberties Organizations' (INCLO) newsletter, *Global Developments in Religious Freedom and Equal Treatment*. INCLO is a network 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)

In this newsletter, we hope to highlight significant international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

This first issue discusses not only current cases, but also cases of particular significance from recent years concerning the following topics:

- Religious freedom and reproductive rights;

- Religious freedom and LGBT rights; and
- Religious expression.

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.

The newsletter will also be available shortly in Spanish and perhaps other languages as well. We will share with you shortly the language(s) in which it will be available and the contact(s) for the different language editions.

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. Join us in celebrating this launch.

Best,
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Religious Freedom & Women's Rights

Access to Abortion

Australia: Since May 2013, the [Medical Board of Victoria has been investigating a doctor](#) who refused to provide a referral for a couple he claims were seeking to terminate a pregnancy based on sex. Victoria's conscientious objection law requires doctors refusing to provide care to make a referral to another doctor, who should be known not to object to that procedure. The doctor in this case claimed that he did not know any physician who would provide the abortion. The [case has invigorated debate](#) about whether Victoria's abortion law strikes the proper balance between religious conscience and women's reproductive rights.

European Union: This past December, the [European Parliament voted not to advance a draft report](#) that recommended both the protection of abortion as a human right, as well as greater regulation of healthcare providers invoking religious refusals to prevent their participation in abortion procedures. Instead, the Parliament passed a resolution stating that sexual and reproductive health rights are a matter for member states. [The report](#) had argued that, even in countries where abortion is legal, the abuse of conscientious objection by healthcare providers has limited women's access.

Ireland: This past July, [Ireland amended its abortion law](#) to give effect to the Irish Supreme Court's previous ruling permitting access to abortion where a woman's [life is at risk, including from the risk of suicide](#). The legislation was enacted, in part, to respond to the European Court of Human Rights (ECtHR) decision in the 2010 case [A B & C v. Ireland](#), where the Court held that Ireland had not provided a clear, accessible procedure by which a woman could obtain a legally authoritative determination regarding whether Irish law permits abortion in her circumstance.

The decision to enact legislation coincided with the public outcry following the 2012 [death of Savita Halappanavar](#). Halappanavar developed a fatal infection following pregnancy related complications. Official reports confirm that healthcare providers rejected Halappanavar's repeated requests for a termination, despite the knowledge that she faced an inevitable miscarriage at seventeen weeks. The report of the Health Services Executive into the death of Halappanavar found "the interpretation of the law related to lawful termination in Ireland" to be a "material contributing factor" in the case. A [civil suit](#) alleging negligence on the part of the hospital has been filed by Halappanavar's husband. INCLO member [Irish Council for Civil Liberties \(ICCL\) has been active](#) on the abortion debate in Ireland.

Poland: In two recent cases, the ECtHR held that the state of Poland had violated the European Convention by failing to ensure that the practice of conscientious objection does not hinder women's access to lawful reproductive health services, and by failing to enforce its own religious refusals law adequately. Polish law is explicit in permitting physicians to refuse to perform medical services such as abortion, but still requiring them to make referrals, among other things. The Court suggested that proper enforcement of this law may fulfill Poland's obligations under the Convention with regard to women's access to abortion. However, Poland violated those obligations when, inconsistent with its own law, it did not regulate physicians' refusal to provide referrals for abortion and other procedures that could lead to abortion, such as prenatal genetic testing. This is the first time that the ECtHR has addressed state failure to regulate conscientious objection in an abortion case. [RR v. Poland](#), App. No. 27617/04, Eur. Ct. H.R. (2011), and [P & S v. Poland](#), App. No. 57375/08, Eur. Ct. H.R. (2012).

United Kingdom: This past June, [the UK Supreme Court agreed to hear a case](#) brought by Catholic midwives seeking the right to refuse to supervise or support staff providing abortions. [UK's Abortion Act 1967](#) protects the right of religious refusal for healthcare providers who "participate" in abortion. At issue in the case is whether "participation" extends only to those who directly perform abortions, or whether it includes those who supervise those directly performing abortions. [Doogan and Wood v. NHS Greater Glasgow & Clyde Health Board](#) [2013] CSIH 36 (lower court decision).

United States: This past November, the [ACLU filed suit](#) against the United States Conference of Catholic Bishops (USCCB) on behalf of a pregnant woman whose health was put at risk when a Catholic hospital denied her information and timely care while she was miscarrying. The hospital at which she sought care is governed by the Ethical and Religious Directives for Catholic Health Care, issued by USCCB, which among other things prohibit Catholic hospitals from providing or recommending pregnancy termination prior to fetal viability, regardless of the risk to the woman's health. The lawsuit charges that the USCCB is ultimately responsible for the unnecessary trauma and harm experienced by the patient. [Complaint, Means v. United States Conference of Catholic Bishops](#). The USCCB's statement on the claims [can be found here](#).

International: In December 2013, Global Doctors for Choice [published a white paper on conscientious objection in the reproductive healthcare setting](#). This paper reviews current evidence of prevalence, examines potential consequences of conscience-based refusal of care, and documents the policy choices that various countries make in this arena, including: whether institutions can claim objector status, which specific occupations can invoke objection; which countries require objectors to disclose their status as objectors to patients; which countries mandate registration of objection status with employers or government bodies; which countries explicitly require provision of services in cases of emergency; and which national medical societies delineate standards of and regulation of care. The authors conclude by recommending

a more standardized definition of the practice of objection, the lack of which hinders tracking and analysis of this practice. They also call on professional healthcare organizations to prioritize establishing certain standards of care, such as eliminating the option of refusal in cases of ectopic pregnancy, inevitable spontaneous abortion, rape, and maternal illness.

Access to Contraception

United States: This spring, the [Supreme Court will hear two challenges](#) to the federal rule requiring insurance plans to cover Food and Drug Administration-approved contraceptives with no cost-sharing. [Sebelius v. Hobby Lobby Stores](#), [Conestoga v. Sebelius](#). The plaintiffs in the cases are for-profit businesses that argue that compliance with the rule would violate their religious freedom. One of the significant questions is whether for-profit, secular corporations can exercise religion at all. Another question is whether businesses can impose their views on their diverse workforce, denying their employees a benefit to which they are entitled by law. The Supreme Court will hear argument on March 25. INCLO member [ACLU filed a friend-of-the-court brief](#) in the case.

Nearly 80 cases in total have been filed challenging the federal rule. INCLO member ACLU has filed friend-of-the-court briefs in many of these cases. For a more thorough update on this litigation, please [visit the ACLU's website](#).

Philippines: This coming March, the [Philippine Supreme Court is expected to rule](#) on the constitutionality of a landmark law requiring the government to subsidize contraception for the poor. The law also requires healthcare providers who object to contraception on religious grounds to refer patients to another provider. Opponents of the law argued that this duty of referral violates both free speech and free religious exercise rights under the Filipino Constitution. The [government argued](#) that this duty upholds a careful compromise between the provider's rights and those of the patient, who should be able to access this information. [Pro-Life Philippines Foundation v. Office of the President](#) (and 13 other petitions).

Sex Segregation

Canada: This January, a public debate arose concerning the [request of a student at an Ontario university for religious accommodation](#). The student had enrolled in an online course, and requested, on religious grounds, to be excused from the one in-person component of the course so he would not have to meet publicly with women. The professor who originally received the request was ordered by the university administration to grant the accommodation of the student's religious freedom. However, the professor refused, arguing that doing so would harm gender equality. [CCLA's Interim General Counsel published an op-ed expressing her personal view against the accommodation](#) because it would harm the recognition of women's dignity and their right to meaningful participation.

United Kingdom: In December 2013, Universities UK (UUK), the body that represents British Universities, published guidance on gender segregation in university lectures and debates. This followed a series of Islamic events at campuses at which male and female students had been separated. The guidance sought to explain the relevant legal framework and contained a [hypothetical case study](#) suggesting that universities should permit voluntary gender segregation by lecture audiences. After triggering heavy criticism, UUK withdrew their guidance and announced that they were seeking further legal advice. The UK Equality Act 2010 specifically permits gender segregation in premises that are permanently or temporarily being used for the

purposes of an organized religion, but not in public areas of learning. However, it is unclear whether “voluntary” segregation would be permitted by law.

Religious Freedom & LGBT Rights

Same-Sex Marriage

Argentina: In 2010, Argentina became the [first country in Latin America](#) to adopt legislation granting same-sex couples all the rights and responsibilities of marriage, including the right to adopt children. The Catholic Church opposed the initiative, with then-Bishop Jorge Bergoglio – now Pope Francis – calling it “a war of god”. INCLO member [CELS was involved](#) in the debate. Its [Executive Director delivered a statement](#) in the public hearing before the Senate calling attention to human rights standards.

Canada: In 2011, the Saskatchewan Court of Appeal held that proposed amendments to Saskatchewan’s Marriage Act – which would allow marriage commissioners to refuse to perform marriages if performing them were contrary to the commissioner’s religious beliefs – would violate the Canadian Constitution. The court stated that allowing marriage commissioners to refuse same-sex couples would harm the recently won same-sex marriage rights of LGBT people, violate their dignity, and undermine the tradition whereby agents of the state serve everyone equally. [Marriage Commissioners Appointed Under the Marriage Act \(Re\)](#), 2011 SKCA 3.

France: This past October, the Constitutional Council rejected a challenge to the national marriage equality law enacted in France earlier in 2013. This challenge was brought by seven mayors who argued that the French Constitution’s “freedom of conscience” provision required that the new law include a religious exemption for civil servants who officiate marriages. The Council rejected this argument, affirming the state’s interest in “the proper functioning and the neutrality of public services” provided by civil servants. Independent summary and commentary in English is [provided here](#). [Franck M. and Others](#), Conseil constitutionnel [CC] [Constitutional Court] decision No. 2013-353, Oct. 18, 2013 (in French).

Hungary: In 2010, the [Constitutional Court ruled](#) that registrars for the state are obliged to register same-sex couples seeking the status of civil partnership, as doing so does not violate their right to freedom of conscience or religion under the Constitution. [Resolution 32/2010. \(III. 25.\)](#) (in Hungarian). Registered partnership has been an option for same-sex couples since 2009, despite numerous objections from different parties in Hungary. (However, while registered partnerships continue to be available to same-sex couples, in 2012 Hungary [passed a law](#) explicitly defining marriage as an act between a man and a woman.) INCLO member [HCLU has been active](#) on this issue.

Ireland: This past November, the Government announced that a [referendum on same-sex marriage will be held in mid-2015](#). The announcement follows the 100-member Convention on the Constitution’s April 2013 endorsement of same-sex marriage, extending to protection of same-sex parents’ guardianship and adoption rights. INCLO member [ICCL has been active](#) on this issue, and is one of three civil society organizations invited to address the Convention in favor of same-sex marriage.

Also in 2013, the Equality Authority announced plans to [review the operation of Section 37 of the Employment Equality Acts 1998-2011](#). Section 37 permits certain medical and educational institutions with a “religious ethos” to discriminate against employees or prospective employees who, for reasons including gender identity and sexual orientation, may be considered as undermining that ethos. The ICCL has been active on this issue, [calling for Section 37 to be amended](#) to specify, among other things, that the “religious ethos” exemption can be used to discriminate only on the grounds of religion, and that an employee’s religious membership must constitute a genuine and legitimate occupational requirement.

Israel: This past October, [legislation was introduced in the Israeli national legislature](#) to create civil unions, which would be available for same-sex and heterosexual couples. This legislation is noteworthy because the only marriages performed *within* Israel that the state recognizes are those performed by religious authorities. This forces anyone who does not meet religious authorities’ requirements for marriage – including same-sex couples – to marry outside the country. Same-sex marriages performed out of state *are* recognized by Israel. Civil unions performed in Israel would provide benefits equal to those of marriage.

United Kingdom: In January 2013, the ECtHR issued its decision in [Eweida and Others v. United Kingdom](#), a much-anticipated case on religious freedom. *Eweida* involved four consolidated cases from the United Kingdom. The case originally titled *Ladele v. Islington* concerned religious discrimination claims brought by a British civil servant who refused to register same-sex civil partnerships due to her religious objections. The ECtHR held that the UK, in refusing to accommodate the civil servant, had not exceeded the “margin of appreciation” granted to member states when implementing the Convention. The Court affirmed that it granted a wide margin of appreciation in cases concerning the balancing of competing Convention rights. The Court recognized the interference with the applicant’s rights, but also recognized the state’s interest in securing the rights of others, such as LGBT individuals, who are also protected under the European Convention. The Court found no breach of Article 14 (prohibition of discrimination) taken with Article 9 (freedom of thought, conscience and religion). INCLC member [Liberty intervened in these cases](#). Independent summary and commentary of all four consolidated cases [can be found here](#). The other consolidated cases, *Eweida*, *Chaplin*, and *McFarlane*, are discussed below. [Eweida and Others v. United Kingdom](#), Nos. 48420/10, 59842/10, 51671/10, 36516/10, Eur. Ct. H.R. (2013).

Relatedly, following the successful passage of the Marriage (Same-Sex Couples) Act 2013 same-sex marriage will be legally recognized throughout the UK, except for Northern Ireland, beginning in 2014. INCLC member [Liberty lobbied for the legislation](#), including a permissive regime allowing those religious denominations that so wish to conduct same-sex religious marriages.

Employment

Australia: This past June, [Australia passed a law to protect LGBT individuals under its federal antidiscrimination laws](#). The law, however, makes an exemption for bodies “established for religious purposes,” which includes religious non-profit entities. [One notable exception](#) is that elder care providers, even if established for religious purposes, will not be able to discriminate on the basis of LGBT status.

Canada: In 2010, the Ontario Superior Court held that a Christian social services organization unlawfully discriminated when it fired a support worker for being lesbian. The court held that the organization did not qualify for an exemption afforded to religious institutions. According to the

court, even though the organization was motivated by a Christian mission, there was nothing in the work of caring for individuals that required workers to be prohibited from engaging in a same-sex relationship. [Ontario Human Rights Commission v. Christian Horizons](#), 2010 ONSC 2105.

South Africa: In 2008, a South African Equality Court held that a Christian church violated antidiscrimination law when, on the basis of its religious beliefs, it fired a music teacher employed as a contractor for being gay. The court rejected the church's claim that the teacher was in a position of church leadership. The court also explained that the church could have continued to employ the teacher without sending a tacit message approving of homosexuality, by publicly declaring that it was continuing to employ the teacher only because it was required by law to do so. [Strydom v. Nederduitse](#) 2009 (4) SA 510 (Equality Court).

United Kingdom: In another one of the four consolidated cases in [Eweida and Others v. United Kingdom](#), *McFarlane v. Relate*, the ECtHR upheld the rejection of a religious freedom and religious discrimination claim by a therapist, who was dismissed by his employer after he refused to provide counsel about sexual issues to same-sex couples. The Court held that the UK approach fell within a wide margin of appreciation and that dismissal was proportionate to the employer's legitimate interest in securing the equal rights of others, namely its LGBT clients. INCLO member Liberty [intervened in these cases](#). Independent summary and commentary of all four consolidated cases [can be found here](#). [Eweida and Others v. United Kingdom](#), Nos. 48420/10, 59842/10, 51671/10, 36516/10, Eur. Ct. H.R. (2013).

United States: This past November, the [U.S. Senate passed the Employment Non-Discrimination Act](#), a bill that would prohibit discrimination in employment based on sexual orientation or gender identity. This legislation, however, includes a religious exemption that [INCLO member ACLU](#) has argued is [too broad](#). The bill now proceeds to the U.S. House of Representatives.

Services & Public Accommodations

Israel: In 2012, the Jerusalem Magistrate Court ruled that owners of a reception hall violated Israeli antidiscrimination law by cancelling a reservation to host a wedding reception after discovering that the reception was for a lesbian couple. The court rejected the owners' argument that their company was a religious institution that qualifies for an exemption. The court stated that businesses should thus be expected to serve the public. [Tal Ya'akovovich and Yael Biran v. Yad Hashmona](#) (2012).

United Kingdom: This past October, the [UK Supreme Court upheld a discrimination claim](#) against the owners of a bed-and-breakfast who refused to provide a double room to a civilly partnered gay couple. The owners argued that providing this service would have violated their religious beliefs. They also argued that they did not discriminate on the basis of sexual orientation, since they would have also refused to allow an unmarried heterosexual couple to share a double room. The Court rejected these arguments. Noting that the civil partnership legislation intended to confer the same rights on a gay or lesbian couple as marriage confers on a straight one and also that the relevant equality provision (now the Equality Act 2010) required the courts to treat marriage and civil partnerships as analogous, the Court held that the hoteliers directly discriminated against the claimants. INCLO member [Liberty filed a brief](#) in this case as interveners. [Bull v. Hall and Preddy](#), [2013] UKSC 73.

United States: This past August, the New Mexico Supreme Court issued its decision in [Elane Photography v. Willock](#), in which it held that a photography studio that refused to photograph a same-sex commitment ceremony violated the state's antidiscrimination law. The studio claimed that providing this ceremony would violate both its free speech and religious beliefs. The [ACLU filed a brief](#) in this case, arguing that the studio should not be exempt from the state antidiscrimination law. The studio has now asked the U.S. Supreme Court to review the case. [Elane Photograph v. Willock](#), 309 P.3d 53 (N.M. 2013). This is [one of a number of cases](#) throughout the US involving business owners invoking religion to refuse to serve LGBT people.

Other

United States/Uganda: Within the United States as well, the case of [Sexual Minorities Uganda v. Scott Lively](#) is currently pending in federal court. This case involves a claim that a U.S. pastor aided and abetted crimes against humanity in Uganda – those crimes being a campaign of systematic persecution of LGBT individuals, including advocacy for the Ugandan Anti-Homosexuality Bill that [Uganda's parliament eventually passed in Dec. 2013](#) (though it must still be signed by the President to enter into law). The [court rejected a motion to dismiss](#), and the trial is expected to proceed throughout 2014. [Sexual Minorities Uganda v. Scott Lively](#), No. 12-CV-30051 (D. Mass.).

Religious Expression & Freedom

Argentina: In 2011, [Argentina passed a law protecting women's right to wear headscarves](#) in public spaces. The law also allows women to wear their headscarves for their national ID card photograph.

Canada: In 2012, the Supreme Court of Canada decided the case of *R v. N.S.*, which presented the question of whether a Muslim woman could be required to remove her full-face veil when serving as a witness in court. The woman in question in the case was the complainant in a criminal sexual assault case. The accused argued that the requirement was justified on two grounds: the right of the accused to face the accuser, and the necessity of seeing a witness's face in order to assess her credibility. The case split the Court, whose majority decided that this question must be decided on a case-by-case basis, depending on the nature and importance of the evidence the witness is expected to give, and the impact that failing to remove the veil would have on trial fairness for the accused. The case was subsequently sent back to the preliminary inquiry judge to determine whether the woman had to remove the veil based on the Supreme Court's decision. The judge concluded that she did. An appeal related to this decision was subsequently denied. INCLO member [CCLA filed a brief](#) in the case. [R. v. N.S.](#), 2012 SCC 72.

This past November, the [Quebec government tabled its proposed secular "Charter of Values."](#) [The charter](#) would have barred all public sector employees from wearing "conspicuous" religious symbols, including face coverings. The charter [drew criticism](#) for appearing to favor Christianity, as it did not simultaneously ban crucifixes displayed by government buildings. In response, Quebec's Minister of Democratic Institutions argued that such crucifixes are part of Quebec's historical identity.

France: This past November, the [ECtHR heard arguments in SAS v. France](#), the much-watched case regarding 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.

INCLO member [Liberty has filed a brief as intervenor. *SAS v. France*](#), No. 31955/11, Eur. Ct. H.R. (pending).

Hungary: The ECtHR is considering a challenge to the Hungarian Church Law, which selectively removed state recognition of church status from some – but not all – religious organizations previously registered as churches. Serving as counsel for various excluded organizations, INCLO member [HCLU has challenged this law](#) both in the ECtHR and in Hungary's Constitutional Court, which deemed the law unconstitutional, but, as the HCLU has argued, provided an insufficient remedy. These excluded organizations claim that the law is discriminatory and violates their freedom of religion. [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#), No. 70945/11, Eur. Ct. H.R. (pending).

Ireland: The Convention on the Constitution recently [recommended amending the clause on blasphemy in the Irish Constitution](#), which has recently given rise to the offence of blasphemy under statutory law following the introduction of the Defamation Act 2009. Members of the Convention expressed a wish to find a more effective way to balance the right of freedom of religion with freedom of expression. Following receipt of the official report from the Convention secretariat, the Government may decide to put the issue to a referendum. INCLO member [ICCL has called for reform](#) of Ireland's outmoded blasphemy laws, including at its appearance before the Convention in November 2013.

Israel: This past April, the Jerusalem District Court issued its decision in [State of Israel v. Ras](#). The court held that women praying at the Western Wall could not be arrested for causing a public disturbance or violating "local custom," despite their wearing prayer shawls (tallits) that only men traditionally wear. [Women's groups are currently negotiating with the Israeli government](#) regarding what sections of the Wall will be dedicated for women's prayers. This compromise is being taken in hopes of allaying the public disagreement. [State of Israel v. Ras](#), File No. 23834-04-13 DC (Jer) (2013).

South Africa: This past March, the Supreme Court of Appeal of South Africa upheld a lower court decision that a state correctional facility unlawfully discriminated in terminating the employment of Rastafarian correctional officers after they refused to cut dreadlocks worn in observance of their religious beliefs. The facility argued that this dress code requirement was justified on the basis that dreadlocks render Rastafarian officers conspicuous and susceptible to manipulation by Rastafarian inmates seeking to smuggle into the facility an illegal drug used in their religious rituals. The Court held that no evidence had been presented that the dreadlocks had ever rendered officers vulnerable to such manipulation. [Dep't of Corr. Servs. v. Police and Prisons Civil Rights Union](#) [2013] ZASCA 40. Relatedly, another court in South Africa, declared this past May that barring a student from school if she did not cut off her dreadlocks discriminated against her on the basis of her Rastafarian religion. [Radebe v. Principal of Leseding Technical School](#), No. 1821/2013.

Provincial legislatures are [currently debating](#) the [Traditional Courts Bill](#). This bill seeks to give more power to customary law, including religious law, within rural South African provinces. The bill has been criticized as proposing a [second-class system of justice, particularly for women](#), given the gendered aspects of much of customary and religious law.

United Kingdom: The final two cases consolidated in the ECtHR case [Eweida and Others v. United Kingdom](#) concerned religious dress. The case originally titled *Eweida v. British Airways* concerned an airline worker who was told to remove a small Christian cross necklace as a result of the airline uniform policy. The Court held that the uniform policy was disproportionate to the

airline's objective of maintaining a particular professional image, and that the UK had failed to protect the applicant's right to manifest her religious beliefs under Article 9 of the Convention. INCLO member [Liberty represented the plaintiff](#) in the domestic proceedings in the case.

In the case originally titled *Chaplin v. Royal Devon*, the ECtHR upheld a hospital's ban on jewelry, even though it prevented a nurse from wearing a Christian cross necklace. The Court held that this regulation was proportionate to the objective of protecting the health and safety of nurses and patients alike (e.g., preventing the necklace from contacting an open wound). Independent summary and commentary of all four consolidated cases [can be found here](#). [*Eweida and Others v. United Kingdom*](#), Nos. 48420/10, 59842/10, 51671/10, 36516/10, Eur. Ct. H.R. (2013).

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