



## Global Developments in Religious Freedom and Equal Treatment

May 2016

Dear Friends:

Welcome to the eighth issue of the International Network of Civil Liberties Organizations' (INCLCLO) 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.

Here are a few brief highlights from this quarter's issue: The Colombian Constitutional Court ruled that same-sex couples have a constitutional right to marriage equality. In the United States, the states of Mississippi and Tennessee enacted laws that authorize discrimination rooted in religious belief. In Northern Ireland, a woman was given a suspended sentence of three months' imprisonment for inducing her own abortion. The U.S. Supreme Court heard argument in another case challenging the requirement that employment insurance plans cover contraception, with the case this time contesting the accommodation already in place for employers who object to the coverage. And Egyptian courts have convicted a number of people for violating the country's law against blasphemy and defamation of religion.

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 INCLCLO'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 Priya Nair at [INCLCLOnewsletter@aclu.org](mailto:INCLCLOnewsletter@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, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

## Religious Freedom & LGBT Rights

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### Marriage & Family

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**Colombia:** On April 28, the Colombian Constitutional Court [held](#) that same-sex couples have the constitutional right to full marriage equality, ruling that state judges, notaries, and clerks “must ensure that citizens’ fundamental rights are observed and that they are all granted equal treatment.” The decision was widely expected after the Court [dismissed](#) a petition against marriage equality for same-sex couples on April 7. Last year, the Court [ruled](#) that same-sex couples have the right to adopt children.

**United Kingdom:** An English family court magistrate, Richard Page, was [removed](#) from the bench in March after saying in a television interview that he believes children should not be adopted by same-sex couples. Mr. Page – who had previously been reprimanded by the lord chancellor and the lord chief justice for improperly allowing his religious beliefs to influence his rulings – said in the interview that it was his responsibility as a magistrate to do what he considered best for the child, and that he believed “it would be better if it was a man and woman who were the adopted parents.” Mr. Page, who is being represented by the Christian Legal Centre, has said that he [intends](#) to take legal action.

**International:** On April 8, Pope Francis [released](#) a long-expected proclamation setting forth guiding principles for the Church’s approach to family issues. The 256-page [document](#), titled *Amoris Laetitia* (The Joy of Love), urged priests to welcome gay people, single parents, and unmarried couples who live together into the Church, stating that “[a] pastor cannot feel that it is enough simply to apply moral laws to those living in ‘irregular’ situations, as if they were stones to throw at people’s lives.” The proclamation further stated that “every person regardless of sexual orientation” should be treated with respect and consideration, and that “every sign of unjust discrimination is to be carefully avoided, particularly any form of aggression and violence.” The proclamation made clear, however, that the Catholic Church would not countenance marriages or unions between same-sex partners. The proclamation incorporates recommendations made after two consecutive assemblies of bishops from around the world to discuss the Church’s approach to family issues.

### Services & Public Accommodations

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**Canada:** The Law Society of British Columbia has appealed a provincial court judgment [quashing](#) the Law Society’s decision not to accredit Trinity Western University (TWU), a private Christian university in British Columbia. As reported in previous issues, law societies in British Columbia, Nova Scotia, and Ontario have declined to accredit TWU, citing the school’s mandatory Community Covenant, which prohibits sexual intimacy outside of “traditional

marriage between a woman and a man.” In January 2015, a Nova Scotia court [held](#) that the Nova Scotia Barrister’s Society lacked the authority to condition its recognition of TWU’s law school on a change in the school’s student conduct policy and determined that the law society did not appropriately balance equality concerns against freedom of religion. In July 2015, the Ontario Divisional Court [upheld](#) the Law Society of Upper Canada’s decision not to accredit TWU’s law school. These decisions are also now on appeal. Other provinces and territories have accredited the proposed school.

### [Government-Sanctioned Discrimination](#)

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**Russia:** Two courts have now ruled that Children-404 – an online civic project founded by LGBT activist Elena Klimova to provide support to LGBT youth – violates Russia’s prohibition against “propaganda of non-traditional sexual relations among minors.” The project hosts private support groups for LGBT teenagers on Vkontakte (the largest Russian online social network) and Facebook, and its website publishes anonymous letters of teenagers subjected to discrimination and harassment because of their sexual orientation and gender identity. On January 23, a Kaluga District Court [banned](#) the project’s support groups on Vkontakte and fined Ms. Klimova. And on April 13, the Central District Court of Barnaul issued an order [blocking](#) access to the Children 404 website itself, requiring Internet service providers to block the website throughout the Russian Federation. Both decisions will be appealed.

**United States:** In response to advances in LGBT equality, a number of state legislatures have passed bills that would authorize institutions and individuals to discriminate based on religious beliefs. Most prominently, the State of Mississippi [enacted](#) a measure, titled the “Religious Liberty Accommodations Act,” that prohibits the state from taking any adverse action against any protected person or entity that acts on the “belief or conviction that: (a) Marriage is or should be recognized as the union of one man and one woman; (b) Sexual relations are properly reserved to such a marriage; and (c) Male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.” The measure has garnered significant [opposition](#), including from major businesses and celebrities.

Additionally, the State of Tennessee enacted a [law](#) authorizing counselors and therapists to refuse to provide counseling or services “as to goals, outcomes, or behaviors that would conflict with [their] sincerely held principles.” Although the law does not expressly single out LGBT people, it is [widely understood](#) to target those individuals. The American Counseling Association and its state counterpart have sharply criticized the law.

The [Georgia](#) and [Virginia](#) state legislatures also passed bills that would have authorized religiously-motivated discrimination against LGBT individuals, but these measures were vetoed by those states’ respective governors.

Also in the United States, the State of North Carolina [enacted](#) a new law, titled the “Public Facilities Privacy & Security Act,” that bans transgender people from accessing public restrooms and other public facilities consistent with their gender identity. The measure also blocks local governments from taking action to protect LGBT people from discrimination in a wide variety of settings, including employment, housing, and public accommodations. A coalition of civil rights groups – including INCLC-member ACLU – has filed a [lawsuit](#) challenging the constitutionality of the law. After the law’s enactment sparked nationwide [controversy](#), the state’s governor issued an [executive order](#) barring the state from discriminating based on sexual orientation and gender identity in its own employment practices. The order is by no means a fix, however. The

Act continues to prevent transgender people from accessing public restrooms and other facilities consistent with their gender identity, it continues to preclude local governments from adopting more comprehensive anti-discrimination protections, and it does not prevent local governments and private employers from discriminating against LGBT people if they so choose.

## Religious Freedom & Women's Rights

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### Access to Contraception

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**United States:** On March 23, the U.S. Supreme Court [heard](#) oral argument over whether the religious accommodation to the Affordable Care Act's contraceptive coverage rule – designed to accommodate religiously affiliated employers that object to providing the insurance coverage – itself violates the employers' religious exercise rights. Under the accommodation, closely held corporations and religiously affiliated non-profit organizations can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator will then arrange and pay for the contraceptive coverage separately. Petitioners challenging the accommodation maintain that, even though they are not required to pay for contraceptive coverage under the law, the request for accommodation itself "triggers" the provision of contraceptive coverage by their insurers and thereby implicates them in actions contrary to their religious beliefs.

Following the argument, the Court directed the parties to file supplemental briefing addressing "whether contraceptive coverage could be provided to petitioners' employees, through petitioners' insurance, without any such notice from petitioners." The briefing is meant to address whether such a proposal would be a less restrictive means of meeting the government's interest in ensuring women's access to contraception. In light of Justice Scalia's death, the case was heard by only eight Justices. If the Justices reach a 4-4 tie over the issue, the lower court decisions stand. A decision is expected by the end of June.

Eight federal appeals courts have rejected challenges to the accommodation, primarily on the ground that it does not substantially burden religious exercise. The Eighth Circuit Court of Appeals parted ways with its sister courts and held that the accommodation impermissibly burdens religious exercise.

For more information, contact [LibertyNewsletter@aclu.org](mailto:LibertyNewsletter@aclu.org) for a subscription to INCLO-member ACLU's newsletter on U.S. religious refusals.

### Access to Abortion

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**United Kingdom and Ireland:** A Belfast woman received a three-month prison sentence after pleading guilty to illegally inducing an abortion; the sentence has been suspended for one year. According to [media](#) reports, the woman ordered abortion pills online after she realized that she could not afford to travel to England for the abortion. She was subsequently reported to the police by her housemates and charged with violations of the [1861 Offences Against the Person Act](#). The case is believed to be the first of its kind in Northern Ireland, where abortion remains largely illegal.

Some are concerned that a similar conviction would be possible under the Republic of Ireland's laws, which also [criminalize](#) abortion in most cases. A concerted campaign to repeal the eighth amendment to the Republic of Ireland's constitution, which bans abortion, is currently underway.

## *Public Accommodations*

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**Australia:** On March 4, the Civil and Administrative Tribunal of the State of New South Wales [held](#) that gender-segregated seating at a lecture sponsored by a Muslim political group violated the state's anti-discrimination law. The law, which prohibits sex discrimination in the provision of services, contains an exemption for the acts or practices "of a body established to propagate religion"; however, the tribunal concluded that there was insufficient evidence to demonstrate that the Muslim political party was established specifically to propagate a religion. The court ordered the political party to post signs at future events stating that gender-segregated seating is not compulsory.

**Israel:** An Israeli woman, Renee Rabinowitz, has [filed](#) a sex discrimination lawsuit against the country's El Al airline, claiming that she was asked by a flight attendant to give up her seat after an Orthodox man objected to having a female seatmate. Some Orthodox Jews believe that Jewish law forbids contact between unmarried or unrelated members of the opposite sex. Ms. Rabinowitz is represented by the Israel Religious Action Center, which previously fought Israeli bus companies and the Ministry of Transportation over gender segregation on bus lines serving Ultra-Orthodox neighborhoods. The case is being heard in Tel Aviv.

## **Religious Freedom & Individual Rights**

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### *Clothing and Garb*

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**India:** On March 16, the High Court of Punjab and Haryana [held](#) that Article 25 of the Indian Constitution, which protects freedom of conscience and religion, guaranteed a Sikh man's right to carry a kirpan (a ceremonial sword) while testifying in a criminal case. In so holding, the court observed that there was no indication that the kirpan posed any safety risk and that, even if there were, adequate alternative measures (such as the use of security personnel) could have been adopted to prevent any risk of harm.

**United Kingdom:** In January, the UK Chief Inspector of Schools [announced](#) that school inspectors will have discretion to rate schools "inadequate" for allowing students or staff to wear full-face veils, such as the niqab. In a statement supporting the new policy, Mr. Wilshaw suggested that the veils may hinder communication and effective teaching. Critics argue that there is no credible evidence to suggest that the veils have any negative effect on education. Prime Minister David Cameron has [said](#) that he would back institutions with "sensible rules" regarding the veils.

**International:** On April 5, the Pew Research Center released a [report](#) surveying government restrictions on women's attire. Of the 198 countries and territories included in the study, 50 had at least one law or policy governing women's religious attire in 2012 and 2013 (the two most recent years for which data is available). Thirty-nine of those countries had laws or policies restricting women's ability to wear religious attire, and twelve had laws or policies requiring women to wear particular attire. Restrictions on women's religious attire were particularly common in Europe, while laws or policies requiring women to wear particular attire were more common in Africa, the Middle East, and Asia.

## *Government Involvement in Religious Affairs*

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**Hungary:** On March 15, INCLC-member HCLU launched a [petition](#) seeking to pressure the government to bring Hungary's Church Act of 2012 into compliance with a decision by the European Court of Human Rights (ECtHR). As reported in previous issues, the ECtHR in [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#) ruled that the Church Act violated the freedom of religion and association provisions of the European Convention on Human Rights by selectively removing church status and state subsidies from several religious organizations previously registered as churches, by establishing a politically tainted re-registration procedure, and by treating the deprived churches differently from the incorporated churches. In November 2015, the Hungarian government [proposed](#) amendments to the Church Act, which would have maintained the church recognition procedure the ECtHR criticized as arbitrary. The proposed amendments failed to pass parliament due to procedural issues; opponents are concerned the government will soon attempt to reintroduce similar legislation.

### [Government Endorsement of Religion](#)

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**Belgium:** In March, Belgium's Constitutional Court [ruled](#) that children cannot be required to attend religion or ethics courses in the country's primary and secondary schools. Prior to the ruling, students had to complete a course of study in either ethics or one of six religions: Catholicism, Eastern Orthodox Christianity, Protestant Christianity, Anglican Christianity, Judaism, or Islam. The Constitutional Court held that the course requirement violates the constitutional right to freedom of religion, and authorized parents to opt their children out of the requirement without having to provide an explanation.

### [Freedom of Conscience and Expression](#)

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**Egypt:** In the past three months, Egyptian courts have sentenced at least five people on charges of defamation of religion in two separate cases. On January 26, 2016, the el-Khalifa Misdemeanour Court in greater Cairo sentenced poet Fatma Naoot to three years in prison and a fine of EGP 20,000 for posting material on her Facebook page mocking the sheep sacrifice rituals associated with Eid al-Adha, a Muslim holy day. In an October 2014 Facebook post, Ms. Naoot wrote "Happy massacre, everybody," referring to the sacrifice rituals. Prosecutors formally charged Ms. Naoot with defamation of religion after receiving a complaint from a private citizen. On March 31, the Cairo Appellate Court confirmed the three-year sentence against Ms. Naoot.

On February 25, 2016, the Beni Mazar Juvenile Misdemeanour Court in the Minya Governate sentenced three Coptic students to five years in prison, and ordered another student detained in a juvenile penal institution, for contempt of religion. The charges were based on a 30-second video the students filmed, in which they recited Quranic verses while mocking the militant group known as the Islamic State (ISIL). Although the students themselves had not made the video public, some of their fellow villagers shared it on Facebook, resulting in angry demonstrations in front of the students' homes.

INCLC-member EIPR has documented a number of similar prosecutions. For more details, please see EIPR's report, "[Besieging Freedom of Thought: Defamation of Religion Cases in Two Years of the Revolution](#)." On March 9, a group of human rights activists, journalists, and public intellectuals – including EIPR – [asked](#) the Egyptian Parliament to repeal the section of the Penal Code related to blasphemy and the denigration of religion.

**Malaysia:** In a landmark decision, a High Court judge in the State of Sarawak [ordered](#) the country's National Religion Department to recognize a man's conversion from Islam to Christianity. The court emphasized that the man had converted to Islam together with his parents when he was 8 years old, and that his constitutionally protected freedom of religion entitled him to convert to Christianity as an adult. Although the national government has said that it will not punish people who convert from Islam to other religions, most of the country's states refuse to recognize conversions from Islam.

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