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Global Developments in Religious Freedom and Equal Treatment

December 2014

Dear Friends:

Welcome to the fourth 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.

As the year draws to a close, courts and governments continue to grapple with questions about how to reconcile commitments to equality and religious freedom. To name just some of the recent developments covered in this issue: the UK Supreme Court held that the country's Abortion Act does not allow midwives to refuse to supervise or support other hospital staff who provide abortions; the Supreme Court of Argentina will soon hear a case about whether mandatory religious instruction in public schools violates the constitutional rights of students; a South African magistrate ordered the parties to undergo mediation in a case asking whether a Christian guesthouse violated the country's Equality Act by refusing to serve a same-sex couple; and, in the wake of the U.S. Supreme Court's decisions in *Hobby Lobby* and *Wheaton College*, the Obama Administration released new provisional rules governing insurance coverage for contraception.

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. To provide the fullest possible view of relevant developments, we include both current cases and cases of particular significance from recent years. 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 Kelsey Townsend 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, 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), and Liberty (United Kingdom).

Religious Freedom & Women's Rights

Access to Abortion

Argentina: Abortion is legal in Argentina when the pregnancy is the result of rape or poses a risk to the woman's health or life. In March 2012, the Supreme Court of Justice of Argentina issued a [landmark ruling](#) in a case involving a 15-year old from the Province of Chubut who requested the termination of her pregnancy, which resulted from rape. The Court's decision clarified that a judicial order is not required to access abortion when any of the situations described above are met and provided guidance to guarantee access to legal abortion. Additionally, the Court noted that health providers seeking to exercise the right to conscientious objection must declare their objection early, so every health institution can ensure adequate human resources to guarantee access to legal abortion. INCLO member CELS submitted a friend-of-the-court brief in the case.

Also in 2012, claimants asked a judge in the Province of Cordoba to recognize the right to terminate a pregnancy involving a nonviable anencephalic fetus, which may pose a risk to the woman's health. The claimants went to court after the hospital and the doctors serving the woman refused to perform the abortion on the basis of their right to conscientious objection. Although the court recognized that public health centers cannot raise institutional conscientious objections, it allowed the hospital's institutional objection because the hospital was a private, though non-religious, institution. In addition, the court directed the woman to ask her medical insurance company for information regarding other healthcare providers willing and able to perform the abortion.

Colombia: In 2006, Colombia recognized the right to abortion under certain circumstances. Since then, conscientious objection to abortion has been a hotly contested issue. In decision T-388/2009, the Constitutional Court in Colombia handed down its most definitive guidelines to date on the practice of abortion. In this decision, the Court reviewed the case of a woman from Santa Marta who sought a legal therapeutic abortion from her healthcare provider. Although the provider authorized the procedure, it requested a judicial order before carrying out the abortion. The judge refused to grant the order, stating that he conscientiously objected on grounds of his personal beliefs. Reviewing the case, the Constitutional Court held that only persons directly involved in abortions, such as treating physicians, are entitled to claim conscientious objector

status; institutions may not claim conscientious objector status in refusing to allow abortions; physicians may claim objector status only if "there is a guarantee that the pregnant woman will have access to the procedure" in safe conditions and without facing added barriers; and judges may not claim conscientious objector status in declining to adjudicate abortion cases. The case addresses one of the most common challenges and debates regarding access to reproductive rights in Latin America.

Women's Link Worldwide and Georgetown University's O'Neill Institute for National and Global Health Law have published a collection of essays about the Colombian Constitutional Court's decision. The book, *T-388/2009 Conscientious Objection and Abortion: A Global Perspective on the Colombian Experience*, is [available online](#). The collection situates Decision T-388/2009 at the center of a global debate on conscientious objection to abortion, including essays on the decision's lessons and implications for Latin America, the United States, Europe, Spain, Africa, and Colombia itself.

European Union: On September 29, the Global Day of Action for Access to Safe and Legal Abortion, nine European civil society organizations (including INCLO member HCLU) [launched](#) a petition asking the European Parliament for a resolution guaranteeing women timely and effective access to safe abortion procedures, as well as affordable contraceptives and support services. The organizations urge all EU citizens to [sign the petition](#).

United Kingdom: On December 17, the UK Supreme Court issued a landmark ruling [NHS Greater Glasgow & Clyde Health Board v. Doogan](#), unanimously holding that the UK's [Abortion Act 1967](#) does not give midwives the right to refuse to supervise or support staff providing abortions. Under the Act, healthcare providers may refuse on religious grounds to "participate" in abortion. In this case, the Court concluded that "participate," as used in the Act, means "taking part in a 'hands-on' capacity" in the course of treatment. It does not, the Court held, extend to acts that simply facilitate the carrying out of the abortion. In reaching this conclusion, the Court referenced earlier decisions interpreting the Act to hold that the Act's protections for conscientious objection do not extend to receptionists who object to typing a letter referring a woman to a hospital consultant for a possible abortion, or to doctors charged with signing the certificate authorizing the abortion. The Court's judgment deals only with the definition of "participation" in the Act; it explicitly does not consider whether the Human Rights Act 1998 or the Equality Act 2010 required the midwives' employers to make reasonable adjustments to the requirements of the job in order to cater to the midwives' religious beliefs, leaving this issue for resolution in the related employment tribunal proceedings.

The decision itemizes the tasks included in the plaintiffs' work duties, and notes as to each whether it falls within or outside the scope of the Act's protection for conscientious objectors. Tasks covered by the protection include: providing part of the treatment in response to requests for assistance from the patient or from the midwife caring for her, or being present if medical intervention is required in connection with the treatment. Excluded from protection are supervisory or support tasks, such as allocating staff to patients, communicating with other professionals, and ensuring that the patient's family is provided with appropriate support. Additionally, the Court held that individuals who object to participation in a patient's abortion have the "obligation to refer the case to a professional who does not share that objection." That, the Court emphasized, is a "necessary corollary of the professional's duty of care towards the patient."

Uruguay: The Uruguayan Court of Administrative Disputes (TCA) recently [issued](#) a decision suspending some articles of Presidential Decree 375/012 that regulate conscientious objection

to legal abortion. In October 2012, the National Congress of Uruguay enacted the Voluntary Interruption of Pregnancy Act, which legalized abortion within the first twelve weeks of pregnancy and recognized conscientious objection rights for gynecologists and medical staff. President José Mujica subsequently issued Decree 375/012, which contains various regulations pertaining to abortion.

Last year, a group of gynecologists from the Integrated National Health System [filed](#) a legal challenge to Decree 375/012. As part of that challenge, the gynecologists called on the court to suspend immediately 11 articles in the Decree that deal with conscientious objection, claiming they violate their freedom of conscience and right to practice medicine by limiting objections to performance of the procedure so as not to include pre- and post-abortion procedures. They also maintained that the regulations unduly restrict their freedom to counsel patients regarding alternatives to abortion.

In a preliminary decision, the administrative court unanimously held that the 11 articles at issue may cause severe damage to the plaintiffs' conscience rights and accordingly suspended the challenged provisions related to gynecologists. The court, however, refused to suspend Article 30, which excludes conscientious objection for staff not directly involved in the procedures, because the gynecologist plaintiffs were not entitled to request such relief. The decision suspends the articles pending a final decision that addresses the legality of the full Decree. Meanwhile, the Voluntary Interruption of Pregnancy Act, which regulates the process that doctors and other medical staff must follow to validly claim conscientious objection, remains in effect.

[Access to Contraception](#)

United States: As we reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations (i.e., a corporation whose stock is not freely traded and is held by a relatively small number of shareholders) that objected to providing coverage. In [Wheaton College v. Burwell](#), in a temporary order, the Court enjoined the government from enforcing an accommodation for religiously affiliated non-profit entities that objected to providing contraceptive coverage. (The order was issued pending appeals in the case.) That accommodation provided that non-profit organizations that objected to providing insurance coverage for contraception could certify their objection to their insurers or third-party administrators; the insurer or third-party administrator would then arrange and pay for the contraceptive coverage separately. That accommodation has been challenged by various non-profits (including Wheaton College) on the ground that filling out the form violates their religious beliefs because it facilitates access to contraception.

In response to the Court's orders, the government [has released](#) an interim final rule, according to which qualifying non-profits will have the option of notifying the U.S. Department of Health and Human Services, instead of their insurers or third-party administrators, of their objection to covering contraception in their insurance. The Department will then itself notify the insurers or third-party administrators, whose responsibility to arrange and pay for coverage for contraception remains the same. The administration has also made clear its intent to extend the accommodation to closely held for-profit corporations.

The new rule has not appeased objecting non-profit organizations, which maintain that the new rules still require them to facilitate contraceptive coverage in violation of their religious beliefs. They thus persist in their lawsuits challenging the rule. To date, all three federal appeals courts

to consider the issue [have rejected](#) that argument. Six other courts of appeals have heard or soon will hear arguments in cases challenging the new rule.

[Gender Discrimination](#)

United Kingdom: On November 17, the Church of England held a [final vote](#) allowing women to become bishops, overturning a centuries' old gender barrier in the Church. The Church's lawmaking body, the General Synod, announced the decision after a show of hands in which approximately 450 of the 480 people present voted for the change. The largely formal November vote follows earlier approval of the reform by both the General Synod and Parliament. (The text of the amending Canon can be found [here](#).) The Church voted to ordain women as priests in 1992, and now roughly one-third of its clerics are women, but the highest offices remained available only to men. Although the new reform removes that final barrier, conservatives were assured that they would be able to request male priests and bishops for their parishes, with disputes to be arbitrated by an ombudsman appointed by the Church's leadership.

[Other](#)

Ireland: In August 2014, the UN Human Rights Committee [indicated](#) that the practice of symphysiotomy, a surgical procedure once used to widen the cervix to facilitate birth, amounted to torture or "cruel, inhuman or degrading treatment or punishment," as defined by Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The procedure – which is alleged to have been carried out on approximately 1,500 women and girls in Ireland between the 1920s and the 1980s, often without obtaining consent – involves severing one of the main pelvic joints and unhinging the pelvis to facilitate a vaginal birth. Survivors of the practice have argued that it was promoted in Catholic-run hospitals and by medical personnel who, for religious reasons, wished to avoid procedures that might limit a woman's capacity to bear more children. The Committee called for investigation into the practice, access to an effective remedy for survivors, and prosecution for those who performed symphysiotomies without the patient's consent. A [statutory redress scheme](#) established by the Government in November 2014 provides *ex gratia* payment to survivors in exchange for the release of any legal claims related to the practice. Both [Survivors of Symphysiotomy](#), which represents the majority of survivors, and INCLC member [ICCL](#) criticize the scheme as wholly inadequate and argue that it fails to meet the Human Rights Committee's investigation and prosecution recommendations.

[Religious Freedom & LGBT Rights](#)

[Services & Public Accommodations](#)

Canada: The Ontario Human Rights Tribunal [will hear](#) the case of a teenager who alleges he was subject to discrimination on the basis of sexual orientation by officials at his state-funded Catholic school. The complaint asserts a host of discriminatory behavior, including delays in approving a student club supporting LGBTQ rights, refusal to include same-sex couples in examples of family structure, and expressed disapproval of adoption by same-sex couples. The local school board has denied all allegations, stating that "the staff did everything to offer the student its support and to intervene in cases of discriminatory language or conduct on the part of other students." *Karas v. Conseil Scolaire de District Catholique Centre-Sud*.

South Africa: After a guesthouse in the Western Cape town of Wolseley refused to lodge a same-sex couple on the ground that doing so would violate the owners' Christian religious beliefs, the couple sued, charging violations of the country's antidiscrimination law. In court, the guesthouse owners argued that they were being discriminated against on account of their religion. The presiding judge referred the case for mediation, a process he viewed as more conducive than litigation to improving relations between the LGBT and Christian communities. LGBT leaders have criticized the move, characterizing it as a failure to uphold the law that could be used to bolster companies or services that use religion to justify discrimination. If the mediation fails, the matter will likely return to court.

United Kingdom: The Equality Commission, an independent public body that oversees enforcement of antidiscrimination law in Northern Ireland, [announced](#) that it will take legal action against a bakery that refused on religious grounds to serve a customer seeking a cake to mark the International Day Against Homophobia and Transphobia. The customer had asked for a cake featuring the slogan "support gay marriage" along with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserts that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintains that it has acted lawfully. The Commission said that, although it "would prefer not to have to litigate," the case "raises issues of public importance regarding the extent to which suppliers of goods and services can refuse service on grounds of sexual orientation, religious belief and political opinion."

In 2012, a judge in Northern Ireland [ruled](#) that the country's ban on adoption by same-sex couples was incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms. That decision was subsequently affirmed by the court of appeals and became final in late 2013, when the UK Supreme Court denied further review. Now, the Catholic Bishops of Northern Ireland have announced that they are ending their relationship with The Family Care Society NI, an adoption service founded by the Church, on the ground that acting in accordance with the ruling would require them to go against the Church's teachings. The adoption service has said that it will continue to provide adoption services and that any money it might receive from the Church in the future will be used only for purposes consistent with Church doctrine. The Democratic Unionist Party, one of the two main unionist parties in Northern Ireland, said that these developments demonstrate the need for legislation to include conscience clauses for religious groups.

[Other](#)

Egypt: Several organizations have called on the Egyptian government to respect human rights by not interfering in private and personal decisions. The statement was issued following a December 7 raid by Egyptian police of a bathhouse in central Cairo. The police arrested 33 men on suspicion of "debauchery" – a charge that has been used against gay people in Egypt extensively. Since October 2013, there has been a brutal crackdown on the LGBTIQ population in Egypt, with over 200 arrests and prosecutions. The actions, the statement charges, violate human rights, including rights to privacy and nondiscrimination and the right not to be punished or tortured based on status.

Israel: The Attorney General of Israel has withdrawn claims that Jerusalem Open House, a grassroots LGBT activist organization, was guilty of negligence in insisting that Jerusalem's 2005 gay pride parade take place despite the violent atmosphere it was likely to provoke. During the parade, one of the participants was stabbed by an ultra-Orthodox resident of the West Bank. The victim filed a lawsuit seeking damages from the attacker, the municipality, and the Israel

Police. The municipality and the police responded by filing a third-party lawsuit against Jerusalem Open House as the parade's organizer, claiming that it should be held responsible for the victim's injuries. In April, INCLO member ACRI asked the Attorney General to withdraw the third-party lawsuit, arguing that it "would strike a mortal blow to civil society organizations and to the very public interest that the prosecution and the Jerusalem Municipality are supposed to represent." On September 30, the Attorney General announced that the Israeli Police would withdraw their claim against Jerusalem Open House.

Uganda: Members of the Ugandan parliament have introduced an [anti-LGBT bill](#), after the country's constitutional court struck down an earlier version because it was passed without the requisite parliamentary quorum. The bill criminalizes "promoting homosexuality" and threatens long prison sentences for anyone convicted of engaging in sex with someone of the same sex. President Yoweri Museveni warned that introducing the bill could provoke trade boycotts from Western nations, but influential evangelical ministers strongly support the law's reenactment.

Religious Expression & Freedom

Clothing and Garb

Turkey: A Turkish university professor [began a two-year jail sentence](#) in November, after he was convicted of violating a Muslim student's constitutional right to education by barring her from entering the university while wearing a headscarf. Turkey's Higher Education Board lifted the country's ban on wearing headscarves on university campuses in 2010, but some universities have contested the decree's legality and maintained the ban.

United States: On October 7, the U.S. Supreme Court [heard oral argument](#) in *Holt v. Hobbs*, which asks whether Arkansas prison officials may prohibit a Muslim inmate from growing a half-inch long beard. The prisoner, Gregory H. Holt (also known as Abdul Maalik Muhammad), claims that the prohibition violates the federal Religious Land Use and Institutionalized Persons Act of 2000, which prohibits the government from substantially burdening a prisoner's religion unless it can demonstrate that the burden is narrowly drawn to serve a compelling government interest. The prison officials argued that the beard ban is necessary to prevent prisoners from smuggling contraband and to ensure that inmates can be easily identified on sight. But Mr. Holt's lawyers argue that the government does not deserve deference in this case, because it cannot point to any evidence to support its justifications for the ban. Audio and a transcript of the argument are available [here](#). INCLO member ACLU submitted a [friend-of-the-court brief](#) in the case.

Government Recognition and Funding of Religion

Argentina: The Supreme Court of Argentina will soon decide whether provincial public schools may have compulsory religious instruction. In 2010, the Asociación por los Derechos Civiles (ADC) and a parents' group challenged the imposition of religious education in the Province of Salta, arguing that it restricts the rights of parents to raise their children according to their beliefs and violates the government's duty of neutrality in the exercise of public functions, particularly with respect to education. The provincial Supreme Court [upheld](#) the religious instruction, basing its ruling in substantial part on the observation that a majority of the province's citizens are Catholic and on the availability of an alternative curriculum for students who do not wish to receive religious instruction in Catholicism.

Canada: On October 14, the Supreme Court of Canada heard oral argument in [Mouvement laïque québécois v. City of Saguenay](#), 2013 QCCA 936, a case charging that recital of a prayer at the beginning of public city council meetings violates the Quebec Charter of Human Rights and Freedoms, particularly the rights to equality and freedom of religion. The case was brought by a non-religious citizen of the City of Saguenay and the Mouvement laïque québécois (Quebec Secular Movement), a non-profit organization whose goal is to defend and promote freedom of conscience, separation of church and state, and secularization of Quebec's public institutions. INCLC member CCLA intervened in the case.

Hungary: The European Court of Human Rights's (ECtHR) decision holding that the Hungarian Church Act violates the European Convention on Human Rights [became final](#) on September 9, after the Hungarian government's request for referral of the case to the Court's Grand Chamber was denied. The Act selectively removed church status and state subsidies from several religious organizations previously registered as churches, particularly those not in favor with the government. As reported in our second issue, the ECtHR [held](#) in April that the measure violates the Convention's provisions on freedom of religion and association, concluding that the government neglected its duty of religious neutrality. Now that the Court's judgment has become final, the government must come to an agreement with the aggrieved churches on the restoration of their status and on just compensation for any damages. If the parties fail to reach an agreement within six months, the Court will decide these issues. INCLC 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).

Other

Canada: A formerly haredi Orthodox Jew is seeking compensation from the Quebec government in the amount of \$1.25 million over its failure to enforce provincial education guidelines at two still-operating haredi yeshivas north of Montreal. Mr. Lowen alleges that the schools, which provide instruction only in Yiddish, did not teach him to read or write English or French and did not follow the required public school curriculum. As a result, Mr. Lowen says that he was left virtually illiterate, unemployable, and unable to support his children.

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