



NGO: EUROPEAN CENTRE FOR LAW AND JUSTICE

UNIVERSAL PERIODIC REVIEW 2019

HUMAN RIGHTS IN THE UNITED STATES OF AMERICA

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ holds Special Consultative Status before the United Nations Economic and Social Council. The purpose of this report is to address the status of human rights in the United States of America for the 2020 Universal Periodic Review (UPR).

Background

2. As this Committee knows well, Stakeholders are strongly encouraged to provide written submissions that discuss, *inter alia*, “developments since the last review and any other human rights issues should also be included”¹. During the last UPR cycle for the United States, the government received a recommendation to “[u]phold a consistent and robust protection of religious freedom, including religious speech and conscientious objection, and provide for accommodation of religious views and actions regarding social issues”².

3. Additionally, in its “List of issues prior to submission of the fifth periodic report of the United States of America,” the Human Rights Committee (HRC) has asked the United States to address “significant developments in the legal and institutional framework within which human rights are promoted and protected . . .”³. One of the specific issues the HRC has requested that the United States address is “termination of pregnancy and reproductive rights”. Specifically, the HRC wants the United States to comment on Presidential Executive Order 13798, “Promoting Free Speech and Religious Liberty”, which provides protections for healthcare providers who have conscience-based objections to participating in or performing abortions. Additionally, the HRC requested that the United States address state laws that, in the HRC’s view, “restrict women’s access to reproductive health and abortion services and create new barriers to them in practice, particularly in light of the Committee’s interpretation of article 6 of the Covenant”,⁴ namely, that the right to life does not apply before birth.

4. The ECLJ notes its strong objection to the Committee’s interpretation of article 6, as it stated in the Executive Summary of its submission to this Committee in its 121st Session:

First of all, it is not honest to speak of abortion solely on the basis of the right to life of the mother and ignore the right of the child. Abortion, by definition, pits the will of the woman against the life of the child. The refusal to acknowledge the very existence of the fetus leaves human life before birth without protection from

¹ Universal Periodic Review (Third Cycle): Information and Guidelines for Relevant Stakeholders’ Written Submissions, United Nations Human Rights Council, 2, *available at* <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> (last visited 2 Oct. 2019).

² *Database of Recommendations*, UPR INFO, <https://www.upr-info.org/database/> (last visited 2 Oct. 2019).

³ International Covenant on Civil and Political Rights, Human Rights Committee, List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America CCPR/C/USA/QPR/5 at 3 para. 12 (18 April 2019).

⁴ CCPR, *General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, CCPR/C/GC/36 (Oct. 2018).

abortion and all forms of manipulation and exploitation, including current and future biotechnology. The Covenant protects the tangible reality of human life itself, that is, the vital biological process from conception to death, which exists independently of the consciousness of the subject.

The decision to ignore human life before birth is legally incorrect because it is contrary to reality and to various provisions of the Covenant and international law that recognize human beings as existing before birth. It would also be contrary to the drafters' intention of the 1966 Pact and the Universal Declaration of Human Rights, which only tolerated abortion.⁵

5. The ECLJ further stated:

[t]he ECLJ appreciates the fact that the right to life is asserted right away in paragraph 2 as being of “all human beings”, “the supreme right from which no derogation is permitted” and which “has crucial importance both for individuals and for society as a whole”, “most precious for its own sake as a right that inheres in every human being” and “a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights”. In addition, paragraph 3 states that the right to life is “a right which should not be interpreted narrowly” and also asserts that it is guaranteed “for all human beings, without distinction of any kind”. Sadly, this broad scope is being diminished through in an unacceptable way in paragraphs 9 and 10 which address the issues of abortion and assisted suicide/euthanasia. There, the wording definitely does not fit with the goals of the General Comment and is clearly incoherent and incompatible with the rest of the draft⁶.

6. Since its last UPR cycle, the United States has significantly improved its protections to guarantee the right to freedom of religion. The United States has also greatly improved its protections for the most vulnerable of all, children in the womb.

Legal Framework and Protections

7. The foundational document of the United States, the Declaration of Independence states: “We hold these truths to be self-evident, that all men are *created equal*, that they are endowed by their Creator with **certain unalienable Rights, that among these are Life**, Liberty and the pursuit of Happiness”⁷. In addition, the United States provides Constitutional protections for life and freedom of religion:

⁵ ECLJ's Contribution to the Drafting of the General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, ECLJ.ORG (6 Oct. 2017), <http://media.aclj.org/pdf/ECLJ-Comments-on-HRC-Draft-GC-on-article-6-and-the-Right-to-life.pdf>.

⁶ *Id.*

⁷ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added).

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ”⁸.

“nor shall any State deprive any person of life . . . without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”⁹.

8. Furthermore, the United States has signed and ratified the International Covenant on Civil and Political Rights, Article 6 of which protects the right to life by recognizing that “[e]very human being has the inherent right to life”¹⁰. It further states that “[t]his right shall be protected by law. No one shall be arbitrarily deprived of his life”¹¹. Article 18 protects freedom of religion:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching¹².

Advances in Religious Freedom the Protection of Life

9. On 4 May 2017, President Trump signed Executive Order (EO) 13798, “Promoting Free Speech and Religious Liberty”. This EO contains important provisions to advance protections of the freedom of religious in both private and in public practice.

10. Section 1 states:

[i]t shall be the policy of the executive branch to vigorously enforce Federal law’s robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government¹³.

11. Section 3 of the EO further protects religious freedom by directing “[t]he Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services [to] consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate” that arose under Obamacare.

12. Section 4 of the EO directed the Attorney General to, “as appropriate, issue guidance interpreting religious liberty protections in Federal Law”.

13. In response to the EO’s directions, several changes and clarifications in Federal Law occurred. For example, then Attorney General Sessions issued a memorandum and appendix “to

⁸ U.S. CONST. amend. I.

⁹ U.S. CONST. amend. XIV, § 1.

¹⁰ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 6.

¹¹ *Id.*

¹² *Id.* art. 18.

¹³ Exec. Order No. 13798, 82 Fed. Reg. 21,675 (4 May 2017).

guide all administrative agencies and executive departments in the execution of federal law”¹⁴. In the memorandum, the Attorney General stated, “[r]eligious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law”¹⁵. The Attorney General further clarified that “[t]he Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one’s beliefs”¹⁶.

14. In the last two years, the U.S. government has protected religious freedom in cases involving city zoning ordinances that discriminated against places of worship¹⁷, state private school scholarships programs denied to students attending religious schools¹⁸, a church being barred from renting space in a town’s civic center¹⁹, the discriminatory practices of the University of Iowa which deregistered a Christian student group²⁰, and many more.

15. Further, the U.S. Government recently recognized that “[c]onscience protection is a civil right guaranteed by laws that *too often haven’t been enforced*”²¹. As a result of that recognition, these protections are now being put into practice. For example, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) recently announced

that, after a thorough investigation and prolonged attempts to resolve the matter, the OCR ... issued a Notice of Violation letter finding that the University of Vermont Medical Center (UVMCMC) violated the Church Amendments (42 U.S.C. 300a-7) by forcing a nurse to assist in an elective abortion procedure over the nurse’s conscience-based objections. OCR also found that UVMCMC has discriminatory policies that assign or require employees to assist abortion procedures even after they have recorded their religious or moral objections to assisting in the performance of such abortions²².

16. As a result of the OCR’s finding, UVMCMC has been required to “change its policies so that it no longer requires health care personnel to participate in abortion against their religious or

¹⁴ Memorandum from the Attorney General for all Executive Departments and Agencies, *available at* <https://www.justice.gov/crt/page/file/1006786/download>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Religious Freedom in Focus, Volume 72 – October/2017*, UNITED STATES DEP’T OF JUSTICE, <https://www.justice.gov/crt/religious-freedom-focus-volume-72-october2017#code> (last visited 2 Oct. 2019).

¹⁸ *Religious Freedom in Focus, Volume 73 – January/2018*, UNITED STATES DEP’T OF JUSTICE <https://www.justice.gov/crt/religious-freedom-focus-volume-73-january2018#montana> (last visited 2 Oct. 2019).

¹⁹ *Religious Freedom in Focus, Volume 77 – December/2018*, UNITED STATES DEP’T OF JUSTICE <https://www.justice.gov/crt/religious-freedom-focus-volume-77-december2018#church> (last visited 2 Oct. 2019).

²⁰ *Religious Freedom in Focus, Volume 78 – February/2019*, UNITED STATES DEP’T OF JUSTICE <https://www.justice.gov/crt/religious-freedom-focus-volume-78-february2019#iowa> (last visited 2 Oct. 2019).

²¹ Press Release, Health & Human Services (19 Jan. 2018), *available at* <https://www.hhs.gov/about/news/2018/01/19/hhs-takes-major-actions-protect-conscience-rights-and-life.html>.

²² Press Release, Health & Human Services (28 Aug. 2019) *available at* <https://www.hhs.gov/about/news/2019/08/28/ocr-issues-notice-violation-university-vermont-medical-center-after-it-unlawfully-forced-nurse.html>.

moral objections, and to take immediate steps to remedy the effect of its past discriminatory conduct,” or lose its receipt of federal funds²³.

17. Abortion is one of the gravest of all offenses against human life and against justice because it entails the deliberate killing of an innocent human being – a human being, as affirmed by President Trump, who is “made in the holy image of God”. It is an indisputable scientific fact that the unborn child is a distinct biological organism, is alive, and belongs to the species *homo sapiens*. Thus, any justification of abortion (aside from the extremely rare life vs. life situations where a mother is at serious risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, the right to live.

18. That proposition is incompatible with the very notion of human rights, not to mention the recognition in the Declaration of Independence that “all men are created equal” and the constitutional principle of the “equal protection of the laws”. And while the U.S. Supreme Court in the tragic 1973 decision of *Roe v. Wade* prevented states from completely outlawing the grave injustice of abortion, even that Court has recognized that the citizens of this nation may rightly be protected against compulsory support for, or participation in, abortion. A pro-life policy, then, seeks to offer to unborn children what protective measures are possible, and to prevent the coerced complicity of the citizenry in the practice of abortion.

19. The U.S. HHS department has taken steps to rectify the policies of prior administrations that demonstrated a disregard for the sanctity of human life, agnosticism toward its duty to uphold the law, and hostility toward states that wished to act in the best interests of their citizens on the issue of life. Now, HHS “serv[es] and protect[s] Americans at every stage of life, ***beginning at conception***”²⁴. In doing so, the U.S. government is recognizing the humanity of children in the womb, respecting the freedom of conscience, and upholding the law rather than playing politics with human life.

20. On 18 January 2019, the HHS Press Office released a statement indicating the Trump Administration’s plan of action to protect life and conscience and listing some of the actions that have already been taken by HHS to protect life and conscience. For instance, in January 2019, the OCR “notified the State of California that its law requiring pro-life pregnancy resource centers to refer clients for abortions, by posting notices about free or low-cost family planning services and abortion,” violated federal law.²⁵ This is important, as it “is the first time that any state has been found in violation of these laws, [and reflects] HHS’s heightened commitment to enforcing conscience protection statutes”²⁶.

²³ *Id.*

²⁴ Strategic Plan FY 2018-2022, U.S. DEP’T OF HEALTH & HUMAN SERVICES, <https://www.hhs.gov/about/strategic-plan/index.html> (last visited 2 Oct. 2019).

²⁵ Press Release, Health & Human Services (19 Jan. 2018), *available at* <https://www.hhs.gov/about/news/2018/01/19/hhs-takes-major-actions-protect-conscience-rights-and-life.html>.

²⁶ *Id.*

21. In addition, HHS passed a rule that requires greater oversight to ensure transparency and compliance so that federal funds are not used to pay for abortion services, which protects U.S. taxpayers from being forced to be complicit in funding abortion through tax funds.

Conclusion

22. The ECLJ commends the United States for acting in ways that advance the freedom of religion, respect the freedom of conscience, and recognize the humanity of children in the womb, and uphold the laws that exist to protect freedom and humanity. We also encourage the United States to remain ever vigilant, continue to find new ways to protect the integrity of the law, religious freedom, the consciences of religious practitioners, and the lives of the most vulnerable – children in the womb.