

Atheist Ireland

9 August 2013



Recommendations / questions for the UN Human Rights Committee regarding Ireland under the ICCPR

Dear Secretary,

1. Introduction

1.1 Atheist Ireland is an Irish advocacy group. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society where the State does not support or finance or give special treatment to any religion. You can read details of our policies on our website at <http://atheist.ie>.

1.2 Since being formed in late 2008, we have campaigned against the Irish blasphemy law, campaigned for a secular Irish Constitution and a secular Irish education system, lobbied political parties and candidates on secular policies during the recent general election. We have made Submission to the United Nations under the Convention on the Elimination of all forms of Racial Discrimination and the UN Human Rights Council under the periodic review.

1.3 We note that the Human Rights Committee will adopt a list of issues on the Fourth Report of Ireland at 109th session (14 October – 1 November 2013). We would appreciate if the Human Rights Committee would give consideration to adopting the following issues on the Fourth Report of Ireland.

2. Article 2 – Freedom from Discrimination, Article 18 Freedom of Conscience, Article 26 Equality before the law, Article 24 The rights of the child.

2.1 Since the comments of the Human Rights Committee in 2008 nothing has changed on the ground for minorities in the Irish education system. Ireland's State Report does not deal with the comments of the UN Human Rights Committee in relation to the religious integrated curriculum in the majority of schools and the failure of the state to protect the human rights of those parents seeking secular education for their children. The Irish State does not recognise that secularism is a philosophical conviction worthy of respect in a democratic society and consequently takes no positive steps to protect secular parents and their children from religious discrimination in the education system.

2.2 The Irish State absolves itself of the responsibility to educate and delegates this responsibility to private bodies and institutions. In essence private bodies and institutions (the majority are religious bodies) have control over the practical application of the human rights of minorities in the Irish education system and are not accountable to the courts for those human rights as schools are not considered 'organs of the state'.

2.3 In a Submission to the European Court of Human Rights in the Louise O’Keeffe case the Irish Human Rights Commission stated that:-

“A serious question arises in the present application as to whether the State has maintained a sufficient level of control over publicly funded national schools to ensure that the rights enshrined under the Convention, namely Articles 3, 8, 13 and Article 2 of Protocol 1, are fully upheld within the education system. “ (page 6 para 20). ¹

2.4 The Commission also stated in their Submission to the European Court that:-

“In the Supreme Court Judgment it was suggested that there was no legal obligation on the Applicant’s parents to send her to the national school she attended or another similar school. It is respectfully submitted that this element of the Supreme Court Judgment, (which refers to the constitutional right of parents to educate their children at home, or to send their children to a school of their choice) did not refer to the criminal penalties under the 1926 Act or indeed reflect the every day reality of the education system in Ireland. In practice, a negligible number of children are home schooled, no doubt as there are very few parents with the means, competence or desire to do so. The references, therefore, to home schooling and private schooling are far outside the norm in relation to the education of children. This passage of the Judgment does not appear to take full cognisance of the compulsory nature of education, both by reference to the Constitution and by statute as outlined above.” (page 8 para 27 – Submission IHRC to European court).

3. Religious instruction classes

3.1 Opting out of religious instruction classes in Irish schools is a theoretical illusion. The Constitutional right to opt out in Irish schools has not been interpreted to mean the physical removal of students from religious instruction classes, prayers, preparation for Holy Communion/Confirmation, Religious ceremonies (Mass etc).

3.2 Parents are responsible for the supervision of their children if they wish to remove their children from religious instruction classes, prayers, and preparation for Holy Communion/Confirmation or ceremonies (Mass etc). There are no non-discriminatory exemptions or alternatives that would accommodate minorities and consequently secular parents cannot ensure that the teaching of their children is in conformity with their convictions.

3.3 In the majority of cases children are left sitting in the back of the religious instruction class and will also attend religious ceremonies during school hours as parents simply cannot remove their child from school on a daily basis.

4. Religious integrated curriculum

4.1 The Supreme Court recognises that a religious ethos (Characteristic spirit) influences all children that attend the school.

Barrington J. Campaign to Separate Church and State v Minister for Education 1998 (3 IR 321) Extract: “A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree, by the religious ‘ethos’ of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

4.2 A Religious integrated curriculum presupposes that children could learn about Christianity and the Catholic faith in detail and not objectively without being subjected mentally to what constitutes or might constitute unwanted influence or indoctrination.

4.3 The Education Act 1998 does not oblige schools to inform parents exactly where in the curriculum they are integrating religion and what part of each subject is not delivered in a neutral and objective manner. The state has no power to ensure that the curriculum is delivered in and neutral and objective manner.

4.4 There is no effective remedy in Ireland to vindicate the human rights under the Covenant of those parents that seek secular education for their children as these schools are not 'organs of the state'.

5. Access to schools without religious discrimination

5.1 Secular parents and their children are dispersed throughout the country and have no option but to send their children to schools with a religious ethos. Section 7 3 (c) of the Equal Status Act permits schools with a religious ethos to give preference to co-religionists, in the event of a shortage of place and in order to uphold their ethos.

5.2 The majority of schools in Ireland are religious and Catholic and consequently parents are obliged to produce a Catholic Baptismal certificate in order to register their child for the local school. In the majority of cases it is the only school in the local area. Schools with a religious ethos operate two admissions lists, one for co-religionists and another one for minorities. Secular parents are obliged to disclose their private details in accessing education for their children.

5.3 The Irish State does not respect secularism as a philosophical conviction that is worthy of respect in a democratic society. Many parents in Ireland believe that religious discrimination undermines the dignity of the human person and they want their children brought up with their human rights guaranteed and protected by the state.

5.4 On 15th March 2012 at the UN under the Universal Periodic Review, Ireland rejected a recommendation to eliminate religious discrimination in access to education. The State claimed that they were opening up more non-denominational schools in Ireland. As it stands now there are no non-denominational schools registered with the Dept of Education so it is difficult to understand how the State could be opening up more.

6. Recommendations by the IHRC on School Enrollment Policies

6.1 In their Submission to the Government on School Enrollment Policies the Irish Human Rights Commission recommended the following and we ask that the Committee raise this with the State party.

6.2 "In addition the IHRC recommends that the State put in place legislative measures to ensure that admission policies are free from discrimination, respect privacy and uphold the right to freedom of religion, conscience and thought, including the philosophical convictions of parents and children.

6.3 The IHRC recommends that pending further diversity in school provision the Government amend section 7 of the Equal Status Acts 2000-2008 which allows primary and second-level schools which have a particular denominational ethos to give preference in admission to students of a particular religious denomination over others and to refuse admission to such students where this is essential to uphold the ethos of the school." ²

7. Protecting the Human Rights of minorities in the education system

7.1 The funding of different types of schools throughout the state cannot be financially achieved. In order to protect the human rights of ALL parents and children significant modifications to the present patronage system will be needed in order to protect the fundamental human rights of secular parents and children. See Report from the Irish Human Rights Commissions on – Religion & Education; A Human Rights perspective. ³

7.2 The following are the Recommendations of the Irish Human Rights Commission in their Report – Religion & Education; A Human Rights perspective

Can you please raise these recommendations with the Irish State.

Recommendations

7.3 “The overarching recommendation of the IHRC, in order to achieve human rights compliance, is that the State should ensure that there is a diversity of provision of school type within educational catchment areas throughout the State which reflects the diversity of religious and non-religious convictions now represented in the State. Diversity of provision will ensure the needs of faith (including minority faith) or non faith children in schools can be met.

7.4 While the state has a choice of models in education, if it chooses to retain the current patronage model with a majority of patrons being religious denominations significant modifications will be required in order to meet human rights standards.

7.5 Terms such as “denominational”, “multi denominational”, “inter denominational”, “non denominational”, or “other” school should be clearly defined in primary legislation, Ministerial regulations or be determined by reference to the recognition of such schools under the Education Act.

7.6 Section 15 of the Education Act should be amended to provide for modifications to the integrated curriculum to ensure that the rights of minority faith or non faith children are also recognised therein. In this regard, the State must take sufficient care that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner with the aim of enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.

7.7 The Minister for Education and Skills should codify and review the Rules for National schools, to ensure that the human rights standards set out in this paper are upheld.

7.8 Where diverse provision of education does not exist in a school’s catchment area, consideration should be given to move formal religion classes to the start or end of the school day. While not ideal in terms of separating children, this might provide greater accommodation to parents of minority faith or non faith children seeking exemption. If sufficient numbers of students sought the exemption, provision could be made for a parallel class in ethics and philosophy, or other minority religions as demand dictates at the same time.

7.9 The State should seek to ensure that all patrons in schools funded by the State are sensitive to the impact that manifestation of religious beliefs in the school may have on children of other faith or non faith backgrounds, In this regard those children should never experience exclusion or segregation in the school, or in any way be undermined in their own faith or other philosophical convictions. Guidelines and examples of good practice, together with the allocation of necessary resources to implement such good practice should be developed in tandem with the enhanced complaints mechanism being recommended to Government. For their part, those denominational schools who have other faith or non faith children as pupils

should take steps to guard against any inadvertent indoctrination or proselytism of those children by teachers.

7.10 The State should continue to seek to promote religious harmony and understanding between groups, including those of a secular viewpoint. Further, it should ensure that indoctrination and proselytism does not take place in State funded schools, possibly through reviewing the remit of Departmental Inspectors to take account of issues concerning religion and education.

7.11 There should be an expanded Ombudsman body with a remit to consider complaints concerning exemption procedures or any unwanted exposure to indoctrination or proselytism. Further it is recommended that the remit of Schools Inspectors should include inspection of how religion classes are conducted in schools, regard being had to the effectiveness of exemption procedure being put in place by schools further to the recommendations in this report.

7.12 In ensuring the rights of school children in accordance with maturity, the views of most second-level students and arguably some older primary school students in relation to the exemption procedures or any perceived encroachment on their personal religious or philosophical convictions, should be taken into consideration, in addition to the views of their parents.

7.13 It should be ensured that the education of teachers does not include compulsory content that conflicts with the rights of such teachers. Any improper encroachment on the right to freedom of thought, conscience and religion of teachers should thus be avoided.

7.14 There should be an appropriate amendment to the Employment Equality Acts to ensure respect for the private life of teachers where their private life does not improperly encroach on the rights and freedoms of others.”

8. Religious Oaths

8.1 Under the Irish Constitution the President, judges and members of the Council of state are required to swear a religious oath. This is contrary to Article 18 of the Covenant, Article 2 and Article 26.

Article 12 – Section 8 of the Irish Constitution requires the President on taking office to take a religious oath. There is no option of taking a declaration.

Article 31 Section 4 of the Irish Constitution requires Members of the Council of State to take a religious oath. There is no option of taking a declaration. The Irish Tanaiste, an agnostic, recently received legal advice that he was obliged to swear this oath.⁴

Article 34 - Section 5 of the Irish Constitution requires Judges on appointment to office to take a religious oath. There is no option of taking a declaration.

The above Articles in the Irish Constitution are incompatible with the obligations of the State under the Covenant.

8.3 Recommendation: Remove the requirement for the President, judges and Council of State to swear a religious oath in the presence of Almighty God (Arts 12, 31, 34), and for the President and judges to ask God to direct and sustain them (12, 34), and replace these with a single neutral declaration that does not reveal any information about the person's religious beliefs.

9. Civil Registration Amendment Act 2012

9.1 In December 2012 the Irish State has just introduced the Civil Registration Amendment Act 2012 which directly discriminates against the non-religious and undermines their human rights without any ratio of proportionality to their stated aim of protecting marriage. It also discriminates between the non-religious, by applying different standards of qualification to some secular bodies than others.

9.2 Religious bodies are not obliged to be ethical, they can promote a political cause, have less than 50 members, do not need to maintain a register of members and do not need to be in existence for five years. If you are a secular humanist body you are obliged to be ethical but if you are a religious body you are not. The government just accepts that religions are ethical but where it comes to humanism, that is a different matter altogether. ⁵

9.3 This is a new piece of legislation, and it is an example of direct, overt and explicit religious discrimination by the Irish State.

9.4 Recommendation: Amend the Civil Registration Act so that it does not discriminate against non-religious bodies and citizens.

10. Article 19 Freedom of Expression – Blasphemy

10.1 Part V of the Defamation Act 2009 establishes a criminal offence which includes a prohibition of publishing or uttering blasphemous matter.

10.2 In 2010 Ireland introduced a blasphemy law despite having informed the Venice Commission in 2007 that in general the legislation already in place provided adequately for these matters. The Council of Europe Commission on Democracy through Law ("Venice Commission") called upon COE member states in 2008 to repeal their respective legislation on Blasphemy and that the offence of blasphemy should be abolished (which is already the case in most European States) and should not be introduced. ⁶

10.3 The United Nations Human Rights Committee in their General Comment No. 34 stated that Blasphemy laws are incompatible with Article 19 of the Covenant. Despite this Ireland introduced a Blasphemy law in a country where the non-religious are second class citizens and do not enjoy the right to equality before the law without discrimination or the right to an effective remedy to vindicate their human rights.

10.4 Atheist Ireland has made a detailed Submission to the Constitutional Convention arguing for the removal of the offence of blasphemy from Article 40.6.1 of the Constitution. ⁷

10.5 Recommendation: Remove the offence of blasphemy from Article 40.6.1 of the Constitution.

- ¹ http://www.ihrca.ie/enquiriesandlegal/amicuscuriae/ihrca_makes_amicus.html
- ² http://www.ihrca.ie/download/pdf/ihrca_school_enrolment_policy_submission_october_2011.pdf
- ³ <http://www.ihrca.ie/publications/list/religion-and-education-a-human-rights-perspective/>
- ⁴ <http://www.atheist.ie/2013/07/ask-tanaiste-eamon-gilmore-to-not-swear-the-religious-oath-next-monday/>
- ⁵ <http://www.atheist.ie/2013/07/the-civil-registration-act-discriminates-on-religious-grounds-and-undermines-human-rights/>
- ⁶ <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29006add2-bil.pdf>
- ⁷ <http://www.atheist.ie/2013/07/atheist-ireland-asks-constitutional-convention-to-remove-blasphemy-offence/>