

Atheist Ireland

16th December.



Dear Ms Logan,

We welcome the intent of your Report, Advice of the Ombudsman for Children on the General Scheme of the Education (Admission to Schools) Bill 2013. However, we are concerned that one of the Recommendations fails to protect the Constitutional and human rights of secular parents and their children. We would like to meet with you to discuss your Report as we believe that this aspect of it undermines what you are seeking to achieve.

The Recommendation in question reads:-

Recommendation

Section 7 of the Equal Status Act 2000 should be amended to provide that no child should in general be given preferential access to publicly -funded education on the basis of their religion, subject to a derogation that may be granted to a denominational school where the operation of this principle gives rise to a situation in which a school's student body may no longer reflect the school's denominational character.

We appreciate that your Report recognises that this recommendation would address one of the concerns expressed by international monitoring mechanisms in the area of education. However, we believe that you cannot separate discriminatory admission policies from the religious integrated curriculum/ethos of denominational schools, and the UN does not do this. In 2008 the UN Human Rights Committee recommended that the Irish State ensures that there is non-denominational education available in all regions of the country because of the religious integrated curriculum in denominational schools.

1. The Religious Integrated Curriculum breaches human rights

Folgero v Norway 29/06/07 (at the European Court) and Leirvag v Norway (UN Human Rights Committee 2004), supports the view that a religious integrated curriculum breaches the human rights of non-religious parents and their children. These non-religious families had access without religious discrimination to the schools they attended, but they still suffered from a breach of their human rights because the curriculum was not delivered in a neutral and objective manner.

The Irish Human Rights Commission, in their Report, Religion & Education: A Human Rights Perspective, May 2011, raised this issue and Recommended that:-

“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.”

We believe that your Report fails to take into account the Constitutional and human rights of secular parents and their children. The Report fails to recognise that the UN Human Rights Committee has stated that secular parents and their children are denied access to non-denominational education in Ireland because denominational schools have adopted a religious integrated curriculum which denies parents and children who so wish access to secular primary education. Integrating religion into the State curriculum is part of the ethos of denominational schools. Under human rights law, the State is obliged to respect the philosophical convictions of secular parents and their children.

2. Parental choice is not granted to most secular parents

You state in your Report that the Constitution protects denominational education as an expression of parental choice and that it is the State's duty to respect and support that choice. If the State does not protect Secular education in addition, as an expression of parental choice, then it is discriminating against secular parents and their children because of their philosophical convictions. This would also mean that the inalienable right and duty of parents under Article 42 of the Constitution only applies to religious parents.

It is difficult to understand how discriminating against certain parents and their children because of their non-religious philosophical convictions fits into the duty of neutrality and impartiality imposed on States under Article 9 of the European Convention and Article 18 of the International Covenant on Civil & Political Rights. It is also difficult to understand how a specific religious integrated curriculum respects the fundamental rights of minorities that have no option but to attend the only State funded school in a particular area.

3. Secular parents have an absolute right to respect

In *Lautsi v Italy* (App No. 30814/06) 18th March 2011 – the European Court stated that:-

“Secondly, the Court emphasises that the supporters of secularism are able to lay claim to views attaining the “level of cogency, seriousness, cohesion and importance” required for them to be considered “convictions” within the meaning of Articles 9 of the Convention and 2 of Protocol No. 1 (see Campbell and Cosans v. the United Kingdom, 25 February 1982, § 36, Series A no. 48). More precisely, their views must be regarded as “philosophical convictions”, within the meaning of the second sentence of Article 2 of Protocol No. 1, given that they are worthy of “respect ‘in a democratic society’”, are not incompatible with human dignity and do not conflict with the fundamental right of the child to education.”

The European Court has stated that **the right to respect for the philosophical convictions of secular parents and their children is an absolute right rather than one that has to be balanced against the rights of others nor one that can be gradually achieved.** The word respect in relation to the rights of parents under Article II of Protocol 1 (the right to education) denotes not only a negative undertaking not to interfere with the right but also incorporates a positive obligation on the State to vindicate that right.

The second sentence of Article II of Protocol 1 of the European Convention is binding on the State in the exercise of all functions in relation to education and that includes admission policies. In balancing respect for the rights of parents the Irish State gives preference to parents who seek a religious education for their children over the Constitutional and Human Rights of secular parents and their children despite the fact that the right to respect under the European Convention is an **absolute right and not to be balanced against the rights of others.**

As you point out on page 8 of your Report, the Committee on Economic Social And Cultural Rights under Article 13 has emphasised that the prohibition against discrimination enshrined in the Covenant is **subject to neither progressive realization** nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.

4. The UNHRC Recommendation from 2008

In 2008 the UN Human Rights Committee stated that:-

“22. The Committee notes with concern that the vast majority of Ireland’s primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus depriving many parents and children who so wish to have access to secular primary education. (arts. 2, 18, 24, 26).

The State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.

Unfortunately your Report only refers to Article 18 of the Covenant, but the UN Human Rights Committee also referred to Article 24 (the rights of the child), Article 2 (the right to be free from discrimination) and Article 26 (the right to equality before the law).

The UN Human Rights Committee recognises that the religious integrated curriculum in denominational schools in Ireland breaches the human rights of secular parents and their children. Secular parents are coerced by force of circumstance to send their children to schools that operate a religious integrated curriculum/ethos as well as discriminatory admission policies.

We are concerned about your Report as it does not recognise that Secular parents and their children have exactly the same human rights as religious parents. What your Report seems to be saying is that in Ireland certain religious parents are entitled to have the state fund a religious education for their children at the expense of the human rights of secular parents and their children and other religious minorities.

This is despite the fact that you point out on page 11 of your Report that in the context of,

“Article 2 of Protocol 1, this concept implies that parents cannot require the State to provide a particular form of teaching. However, the State must achieve a just balance between the protection of the general interest of the community and the respect due to fundamental rights, with particular importance attached to the latter.”

We cannot understand how it is in the general interest of the community to oblige Secular parents to send their children to schools in violation of their conscience and lawful preference. In the majority of cases the only school in a local area discriminates on religious grounds in Admission Policies and integrates a specific religious ethos into the State curriculum. Schools are not legally obliged to inform parents where they are integrating religion into the curriculum and consequently parents cannot ensure that the education of their children is in conformity with their convictions.

Also, if you believe that the State must attach particular importance to the respect due to fundamental rights, then it must attach particular importance to the respect due to the fundamental rights of all, including secular parents and not just religious parents.

5. Protecting the conscientious objections of minorities

Article 42.3.1 of the Irish Constitution states that:

“the State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State”.

Despite the above Article in the Constitution, the State is ‘providing for’ the education of the children of secular parents in denominational schools, notwithstanding the fact that these schools violate their conscience and lawful preference. We don’t wish to send our children to religious schools because they discriminate on religious grounds and do not respect our philosophical convictions. This is not a human rights based education for our children as it teaches them that discrimination on religious grounds is an acceptable part of life.

Article 44.2.4 of the Irish Constitution was meant to protect the conscientious objections of minorities in the education system. In 1995 the Constitutional Review Group Report stated the following in regard to Article 44.2.4 and Article 42.3.1 of the Constitution:-

“if Article 44.2.4° did not provide these safeguards, the State might well be in breach of its international obligations, inasmuch as it might mean that a significant number of children of minority religions (or those with no religion) might be coerced by force of circumstances to attend a school which did not cater for their particular religious views or their conscientious objections. If this were to occur, it would also mean that the State would be in breach of its obligations under Article 42.3.1.”

In practice this is happening at present, as parents have no choice but to send their children to the only state funded school in a particular area. This means that, if we apply the reasoning used by the Constitutional Review Group, the state is in breach of its obligations under Article 42.3.1.

6. The influence of a school’s religious ethos

In the Supreme Court case Campaign to Separate Church and State, Barrington J stated:-

*“The Constitution therefore distinguishes between religious ‘education’ and religious ‘instruction’ – the former being the much wider term. 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.**”*

The above comments of Barrington J speak of the **wish** to attend a particular school. The Supreme Court has not examined whether the same principles would apply if parents were obliged by force of circumstance to send their children to such schools. If the same principles did apply then it is clear that Article 44.2.4 would not protect minorities in denominational schools and consequently the state would be in breach of all of its International obligations.

The Supreme Court also referred to influencing students to **some degree**. The degree of influence in denominational schools goes beyond what is permitted under human rights law. It is clear from the Leirvag case at the UN that the curriculum must be delivered in a neutral and objective way. The European Court uses the terms, objective, critical and pluralistic.

7. Conclusion

As it stand now we believe that the State is in breach of Article 42.3.1 of the Irish Constitution and its International obligations in relation to education, non-discrimination, equality before the law, the rights of the child, the right to private and family life and the right to an effective remedy.

As secular parents we have no choice but to send our children to denominational schools that discriminate in access and breach our human rights as the ethos in denominational schools fails to respect our philosophical convictions.

It really does not make a difference if the student body does not reflect the ethos of the school as the student body no matter what the religious or philosophical convictions of their parents are entitled to their Constitutional and Human Rights if the State is 'providing for' their education in a publicly funded denominational schools.

While we welcome the fact that you have recommended the removal of religious discrimination in access to schools we believe that recommending derogation for any school fails to take cognisance of the Constitutional and Human Rights of secular parents and other minorities.

We enclose our Submission on the General Scheme of the Education (Admission to Schools) Bill 2013.

As mentioned, we would like to meet with you to discuss these issues, and we look forward to hearing from you.

Yours faithfully,

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Human Rights Officer
Atheist Ireland

cc Irish Human Rights Commission
Equality Authority