

## **Atheist Ireland**

Catholic ethos schools will not objectively teach new ERBE course — 2nd Submission to the National Council for Curriculum and Assessment on proposed new course



### **From the Toledo Guiding Principles:**

“In the process of involving stakeholders, it is vital to strike an appropriate balance. A fundamental consideration is that teaching about religion should be based on sound scholarship, and not merely on what religious communities want said about themselves and others. Furthermore, while it is important to ensure that representatives of religious communities are allowed to give input and advice, this should not be taken to the extreme of giving them too much decision-making power at the cost of abdicating State responsibility. The European Court of Human Rights has made it clear that excessive involvement of religious authorities from one community in decisions that affect the rights of those belonging to another community may itself amount to a violation of the right to freedom of religion or belief.”

### **Contents**

1. Introduction and our previous submission
2. Obligation of the NCCA to promote human rights
3. Statutory function of the Irish Human Rights and Equality Commission in relation to public bodies such as the NCCA
4. Objects and functions of the NCCA under the Education Act 1998
5. Powers of the Inspectorate under the Education Act 1998
6. Education Act 1998 — Powers of the Minister to prescribe the curriculum
7. Amending Section 15 of the Education Act 1998 is not on the political agenda
8. Section 33 Education Act 1998 – Regulations
9. The Catholic Church rejects teaching about Religions and Beliefs in an objective, critical and pluralistic manner
10. The proposed new Education about Religions, Beliefs and Ethics will be mainly delivered by Catholic Teachers
11. The proposed course has the potential to make things more difficult for atheist and secular families
12. Conclusion

## 1. Introduction and our previous submission

This Submission from Atheist Ireland follows on from our Document in March 2015 on the proposed course and our two meetings with the NCCA on the course.

<http://www.teachdontpreach.ie/2015/03/ncca-erb-ethics-course/>

Atheist Ireland supports the Recommendation from the Forum on Patronage and Pluralism on teaching **ABOUT** religions, beliefs and ethics in schools.

The Recommendation from the Forum on Patronage and Pluralism regarding ERB and ethics reads: <sup>1</sup>

“The Advisory Group is of the view that all children have the right to receive education in ERB and Ethics and the State has the responsibility to ensure that this is provided. The Advisory Group requests that the NCCA, with assistance from the partners and mindful of existing programmes, should develop curriculum and teacher guidelines for ERB and Ethics, in line with the Toledo Principles, the RedCo, and the Cambridge Primary Review.”

Given the legal framework in Ireland, and the fact that we have direct experience of a Religious Education course at second level, we have already requested that our right to exempt our children from this course is recognised and guaranteed.

From the Toledo Guiding Principles: <sup>2</sup>

“The state may satisfy this duty of neutrality either by designing a curriculum that is itself sufficiently impartial and balanced, or, in those instances in which the state provides instruction in a particular religion or belief, by granting rights to opt out on the ground of conscientious objection. This right must be realisable in practice, and not a mere theoretical possibility. Moreover, the requisite neutrality would be compromised if pupils were subjected to any disadvantage, discrimination or stigma on account of the exercise of this right to be exempted from such classes, or elements of classes”.

We cannot see how this proposed course will promote respect for our human rights, given the fact that the NCCA have no power to ensure that schools deliver this course in an objective, critical and pluralistic manner and in accordance with the Toledo Guiding Principles and human rights law.

Our views on this matter have not changed and at the moment we do not accept the assurances of the NCCA that the School Inspectorate will ensure that the Education about religions, beliefs and ethics course will be delivered in an objective, critical and pluralistic manner and in accordance with human rights law.

We have already been informed by the NCCA (in writing) that they have no control over how any course is delivered and consequently we have no alternative but to seek an exemption. None of the Documents published as a result of this consultation changes that view.

The Catholic Church has rejected the Toledo Guiding Principles and they have control over the ethos (Characteristic Spirit) of the vast majority of Primary Schools in the country.

In this Submission we will set out our reasons for believing that our human and constitutional rights will not be guaranteed and protected. We would welcome any clarification from the NCCA.

## **2. Obligation of the NCCA to promote human rights**

The NCCA is an ‘organ of the state’ and as such under the European Convention on Human Rights Act 2003 is obliged to do the following: <sup>3</sup>

Section 3.—(1) Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions.

In the Action Plan submitted by Ireland to the Council of Europe in the Louise O’Keeffe case, it stated that: <sup>4</sup>

“Section 3(1) of the European Convention on Human Rights Act 2003 requires an organ of State (defined as a body established by law or through which any of the legislative, executive or judicial powers of the State are exercised) to perform its functions in a manner compatible with the State’s obligation under the Convention provisions. Organs of the State include Government Departments such as the Department of Education and Skills, the Health Service Executive, the Child and Family Agency and the police force, An Garda Síochána. Therefore, by way of further protection for such a litigant, Section 3(2) of the 2003 Act provides that a person who has suffered injury, loss or damage as a result of a contravention of subsection (1), may, if no other remedy in damages is available, institute proceedings to recover damages in respect of the contravention. This specific right of action relates to any State failing from 31st December 2003 when the Act came into operation. Section 2 of the Act requires courts when interpreting and applying any statutory provision or rule of law, in so far as is possible, subject to the rules of law relating to such interpretation and application, to do so in a manner compatible with the State’s obligations under the Convention.”

It is clear that as an ‘organ of the state’, the NCCA must uphold the State’s obligations under the European Convention. The NCCA has no option but to recommend the proposed ERB and ethics courses be delivered in an objective, critical and pluralistic manner as per Article II of Protocol 1 of the European Convention.

The NCCA has no legal power to oblige schools to deliver the proposed ERB and ethics course in a manner compatible with the European Convention. However, the NCCA does have a legal obligation to recognise, acknowledge and make Recommendations on the changes needed to ensure human rights are respected and protected in all our schools.

Legislative change is needed to ensure that the proposed course reflects the Recommendation from the Forum on Patronage and Pluralism, Recommendation from IHREC and human rights law. The Minister for Education & Skills cannot make any Regulations (Section 33 Education Act 1998) to oblige schools to deliver the ERB and ethics course in an objective, critical and pluralistic manner without amending Section 15 – 2 (b) of the Education Act 1998.

## **3. Statutory function of the Irish Human Rights and Equality Commission in relation to public bodies such as the NCCA**

At a meeting in January 2016 with the NCCA, we were disappointed to learn that the NCCA had not met with the Irish Human Rights and Equality Commission and had no plans at the time to do so. We asked that the NCCA meet with the Commission in relation to the proposed ERB & Ethics course and also asked that the proposed course would be ‘human rights proofed’. The Irish Human Rights & Equality Commission has already done a substantial amount of work in this regard (See Report Religion & Education; A Human Rights perspective <sup>5</sup>).

The Irish Human Rights & Equality Commission has made the following recommendations in relation to the delivery of the state curriculum.

In their Report on Religion & Education; A Human Rights Perspective they recommended that: <sup>6</sup>

“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.”

The also stated that:-

“The key phrase here is the requirement on the State to take “sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No 1. The meaning of the term “objective, critical and pluralistic” is repeated throughout the Court’s case law. As stated, its purpose is to enable pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.”(para 256, p 83)

The IHREC recommended in their submission on the Education (Admissions) to Schools Bill that: <sup>7</sup>

“The Commission recommends that the new section 62(6) to be inserted into the Education Act should be amended to the effect that, in setting out the characteristic spirit and general objectives of the school, outside the specific context of faith formation and religious instruction which parents wish to avail of and where exemptions apply, regard shall be had to providing information in relation to religion in an objective, critical and pluralistic manner that avoids indoctrination.”

As the NCCA have not met with IHREC or made a decision to human rights proof the proposed course, it is clear to us that the recommendations from the body that are obliged to promote human rights are being ignored.

The Irish Human Rights & Equality Commission is a statutory body set up under the Irish Human Rights and Equality Act 2014. The statutory purpose of the Commission is to:

- “(a) to protect and promote human rights and equality,
- (b) to encourage the development of a culture of respect for human rights, equality, and intercultural understanding in the State,
- (c) to promote understanding and awareness of the importance of human rights and equality in the State.”

The Irish Human Rights and Equality Commission have a statutory function in relation to public bodies such as the NCCA (see Section 42 – 3,4 Human Rights & Equality Commission Act 2014). The NCCA are obliged under the Act to set out in their strategic plan an assessment of the human rights and equality issues it believes are relevant to the functions and purpose of the body. The NCCA are also obliged to show policies, plans and actions that are to be put in place to address those issues.

We have been unable to locate any policies or plans in relation to how the NCCA will, as an organ of the state, address its obligation to uphold human rights.

#### **4. Objects and functions of the NCCA under the Education Act 1998**

Section 41 – 3 (d) of the Education Act 1998 obliges the NCCA in carrying out its functions to:

“have regard to the practicalities of implementation of any advice which it proposes to give to the Minister.”

The practicalities of giving advice to the Minister in relation to the proposed new course on Education about Religions and beliefs means that the NCCA must ensure that any advice highlights the difficulties in relation to protecting the human rights of all in the education system.

The NCCA cannot just ignore the human rights issues in relation to the implementation of the course. The NCCA must recognise the fact that the statutory body established to uphold human rights in the country, IHREC, has made recommendations in relation to the delivery of the curriculum in an objective, critical and pluralistic manner in order to uphold human rights.

Those recommendations are about amending the Section 15 of the Education Act 1998 and they do not refer to the Inspectorate (Section 13 (1) of the Education Act 1998).

Informing us that the Inspectorate will ensure that the delivery of the proposed course on ERB and ethics is delivered in an objective, critical and pluralistic manner does not make sense to us and we would appreciate the NCCA expanding on this analysis.

It seems to us that this analysis is at variance with the Recommendation of IHREC. Why would IHREC make recommendations to amend the Education Act 1998 to ensure that the curriculum was delivered in an objective, critical and pluralistic manner if the School Inspectorate could guarantee that this would happen?

This is a fundamental issue that the NCCA must deal with as it relates to human rights and the obligations of the NCCA under the European Convention on Human Rights Act 2003 and the Irish Human Rights & Equality Commission Act 2014.

The only way of ensuring compliance with the Recommendation from the Forum on Patronage and Pluralism (the Toledo Guiding Principles) and the European Convention is to amend the Education Act 1998 as per the Recommendations from the Irish Human Rights and Equality Commission.

#### **5. Powers of the Inspectorate under the Education Act 1998**

Under Section 13 of the Education Act 1998 the Inspectorate does not have any powers in relation to ethos (Characteristic spirit). The Inspectorate cannot oblige schools to deliver the proposed course (or any course under the curriculum) in an objective, critical and pluralistic manner as the Minister cannot make any Regulations in relation to ethos under Section 33 of the Act unless Section 15 – 2 (b) of the Act is amended.

The Supreme Court decision in the Louise O’Keeffe case noted that:<sup>8</sup>

32. Accordingly, Fennelly J concluded that the State Defendants were not vicariously liable for the acts of LH or, for the same reasons, for the failure of O to report the 1971 complaint to the State. LH was not employed by the State Defendants but he was, in law, the employee of the Manager, S. While LH had to have the qualifications laid down by the Minister and to observe the provisions of the Rules for National Schools and while the State had disciplinary powers in relation to him pursuant to those Rules, he was not engaged by the State and the State did not have the power to dismiss him:

“The scheme of the Rules and the consistent history of national schools is that the day-to-day running of the schools is in the hands of the manager. The inspection regime does not alter that. The department inspectors do not have power to direct teachers in the carrying out of their duties. ... On normal principles, the State has no vicarious liability for the acts of a teacher appointed by the manager of a national school under the system of management of national schools.”

## **6. Education Act 1998 — Powers of the Minister to prescribe the curriculum**

Under the Education Act 1998 the Minister must have regard to the Characteristic Spirit of the School when prescribing the curriculum. Claiming that the Inspectorate will deal with this issue and ensure that the ERB and ethics course is delivered in an objective, critical and pluralistic manner simply cannot happen given the functions of the Board under Section 15 – 2 (b) of the Act.

Section 30 (1) of the Education Act States that:-

“The Minister may, from time to time, following such consultation with patrons of schools, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers, as the Minister considers appropriate, prescribe the curriculum for recognised schools, namely –

- (a) the subjects to be offered in recognised schools,
- (b) the syllabus of each subject,
- (c) the amount of instruction time to be allotted to each subject, and
- (d) the guidance and counselling provision to be offered in schools.

(2) Without prejudice to the generality of the subsection (1), the Minister -

(a) shall have regard to the desirability of assisting schools to exercise their powers as provided for under subsection (4).

(b) shall have regard to the characteristic spirit of a school or class of school in exercising his or her functions under this section,

(c) may give directions to schools, where he or she considers it appropriate, to ensure that the subjects and syllabuses pursued in those schools are appropriate and relevant to the educational and vocational needs of the students in those schools,

(d) shall ensure that the amount of instruction time to be allotted to subjects on the curriculum as determined by the Minister in each school day shall be such as to allow for such reasonable instruction time, as the board with the consent of the patron determines, for subjects relating to or arising from the characteristic spirit of the school, and

(e) shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.”

## 7. Amending Section 15 of the Education Act 1998 is not on the political agenda

Amending Section 15 – 2 (b) of the Education Act 1998 is not part of the Education Admissions to Schools Bill. It is clear from recent Documents emanating from the Department of Education & Skills that there is no proposals to amend Section 15 2 (b) of the Educations Act to comply with the Recommendations of IHREC. It is also clear that the Department of Education intend to leave it up to each individual school to uphold human rights.

That means that schools must continue to interpret human rights according to the ethos of their patron. Respecting parents' convictions means whatever a patron body says it means and it is not based on the interpretation of the European Court of Human Rights.

In a recent Document on Advancing School Autonomy the Dept of Education & Skills outlined these issues:<sup>9</sup>

“Ethos, patronage and legislation

In all primary and post-primary schools, the school's stated ethos (or characteristic spirit as it is termed in the legislation) is decided by the owners or patrons/trustees of the school and not by central government. Autonomy over ethos does not exist at the level of the school board, principal or teachers. Indeed, one of the specific duties of a board is to uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school. Thus, depending on the unit of analysis, schools may be viewed as fully autonomous in respect of ethos, or partly autonomous if the unit of analysis in an individual school operating within a specific ethos.

While, as noted above, the operating rules for schools are largely set by the State, the ethos espoused by the trustees/ patrons can inform aspects of how those operating rules are acted upon in schools. For example, a denominational primary school may determine the content of its religious education curriculum on the basis of the school's religious ethos. It is important to highlight that choice of ethos in Ireland is an area in which there is much independence.”

The ethos of the Catholic Church (the majority patron body) can inform aspects of how the operating rules (set by the state) are acted upon in schools. This means that the proposed new ERB and ethics course can be delivered through the lens of the Catholic Church and indeed any Patron body. It has happened with regard to the second level Religious Education Course and nothing has been done about that.

It is clear from the Governance Manual for Primary Schools issued by the Dept of Education & Skills that Patron bodies (mainly the Catholic Church) have complete control over how the operating rules set by the state are acted on in schools. It is also clear that the State have no control over the Characteristic Spirit (ethos) of any school.<sup>10</sup>

The Department of Education & Skills recognises that upholding the rights of all minorities in schools is an important responsibility of the State. Unfortunately they are not prepared to be prescriptive with regard to obliging schools to protect and uphold the human rights of minorities.

In a paper published in July 2014 called ‘Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions’, the Department Education & Skills just ‘encourages’ schools to look at their own practices critically. It is clear from this Document that the State has no intention of amending legislation or obliging schools to deliver the ERB and ethics course in accordance with the Toledo Guiding Principles and human rights law.

“Respecting and upholding the rights of all minorities in schools is an important responsibility of the state”

“The paper does not set out to be prescriptive and recognises that each school has its own ethos and operates in a particular context. Therefore, it encourages schools to consider their own practices critically and to consult meaningfully with their own communities and stakeholders in formulating policies and developing practice in this area. It also envisages that such policies and practices would evolve and develop as the school and the environment in which it operates continue to change and develop.”

The state has no plans to amend Section 15 of the Education Act 1998 to oblige schools to deliver the curriculum in an objective, critical and pluralistic manner. We do not accept that our rights will be protected if this does not happen. This proposed course on Education about Religions and beliefs is not available to atheist and secular families as our human rights cannot be guaranteed and protected.

### **8. Section 33 Education Act 1998 – Regulations**

There is nothing in this Section of the Education Act 1998 that permits the Minister to make regulations regarding the ethos (Characteristic Spirit) of the school/Patron. The Minister can make regulations under Section (l) in relation to the curriculum of school but he/she still cannot oblige schools to deliver the curriculum in an objective, critical and pluralistic manner if that is not in accordance with the ethos of the Patron.

### **9. The Catholic Church rejects teaching about Religions and Beliefs in an objective, critical and pluralistic manner**

Delivering education about Religions and beliefs in an objective, critical and pluralistic manner is not in accordance with the ethos of schools (the vast majority) under the patronage of the Catholic Church. The Catholic Church has rejected the Toledo Guiding Principles and control schools under their patronage on the understanding that: <sup>12</sup>

The Council for Education of the Irish Episcopal Conference has stated that:

“The preliminary report makes no mention of the characteristic spirit of the school whereas the Education Act and subsequent policies and circulars are all premised on the principle that the characteristic spirit informs all dimensions of the life of the school and finds expression in manifold different ways, both tangible and intangible.”

“The integrated curriculum and the Religious Education programme must give expression to the characteristic spirit of the school. How, for instance could Social, Personal and Health Education be conceived of independently of the Religious Education programme? While students can opt out of particular subjects in accordance with the law, they cannot opt out of the culture and characteristic spirit of the school whether it is non-denominational, multi-denominational or denominational.” (page 3 Submission to Forum on Patronage and Pluralism)

Ethos (Characteristic spirit) is not just about religious instruction and education, it can and does have consequences for all the subjects under the curriculum and the daily life of the school, and it also has consequences for the delivery of the state curriculum.

### **10. The proposed new Education about Religions, Beliefs and Ethics course will be mainly delivered by Catholic Teachers**



From the Toledo Guiding Principles:

“An individual’s personal religious (or non-religious) beliefs cannot be sufficient reason to exclude that person from teaching about religions and beliefs. The most important considerations in this regard relate to professional expertise, as well as to basic attitudes towards or commitment to human rights in general and freedom of religion or belief in particular, rather than religious affiliation or conviction.”

In Ireland an individual’s personal religious (or non-religious) beliefs is a sufficient reason to exclude that person from accessing the teaching profession. The recent changes to the Employment Equality Act retain the right of schools to discriminate on the ground of religion.

Minorities find it difficult to get a job teaching if they are not prepared to teach Catholic religious instruction in Primary Schools, the vast majority of schools are under Catholic patronage. Teachers are trained to teach Catholic Religious Instruction in schools (Certificate in Religious Studies) and they are legally obliged to uphold the ethos of the Patron.

The fact of the matter is that teachers from minority faiths, atheists or secular traditions cannot get access to the teaching profession because they are not Catholic. The State will now have a course called Education About Religions and Beliefs and Ethics and it will be mainly Catholics who are hired to teach it. This is not pluralism and diversity, it is religious discrimination.

From the Report by the Irish Human Rights & Equality Commission;-

“94. However, the aforementioned religious curriculum course is compulsory for those opting to take the voluntary Certificate in Religious Studies. In turn, the Certificate in Religious Studies appears to be a requirement for teaching posts in many primary schools managed by the Catholic Church, although this is a requirement at the discretion of individual patrons. Therefore, in practical terms it is difficult for student teachers to opt out of the curriculum religion. To do so means limiting a teacher’s employment prospects in the State, because as previously noted 97% of Irish primary schools are under denominational patronage, with over 92% under Roman Catholic patronage.”

### **11. The proposed course has the potential to make things more difficult for atheist and secular families**

There are now nine Recommendations from various United Nations and Council of Europe bodies in relation to protecting the Human Rights of minorities in the Irish Education system. The Primary School Curriculum does not respect the rights of atheist and secular parents as it is not impartial and neutral toward various religions, faiths and beliefs.

Promoting the moral and spiritual development of all students through religious education is not a neutral and impartial stance. It is difficult to understand how the NCCA can support pluralism while at the same time supporting the Primary School Curriculum and the Religious Education Course at second level.

In their Report on Religion and Education; A Human Rights perspective IHREC stated that:

“259. However, the Court reiterated that:

“it has always stressed that, in a pluralist democratic society, the State’s duty of impartiality and neutrality towards various religions, faiths and beliefs is incompatible with any assessment by the State of the legitimacy of religious beliefs and the ways in which those beliefs are expressed.” (page 84)

It is difficult to understand how the NCCA can respect the philosophical convictions of atheist and secular parents and their children in the proposed new course when it continues to support promoting the moral and spiritual development of our children through religious education and bringing them to a knowledge of God.

All recognised schools in Ireland are obliged by the Education Act 1998 to operate in accordance with legislation, policy and curriculum as determined by the Minister for Education & Skills, Section 9 – (b) Education Act 1998).

The legislation, policy and curriculum oblige schools to promote the spiritual development of students (Section 9 – (d) Education Act 1998), while having regard to the Characteristic spirit (ethos) of the school.

“promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, have regard to the characteristic spirit of the school,”

One of the key areas of the Primary School Curriculum is to promote the spiritual dimension of life. The concept of spirituality is not defined in the Education Act 1998 and in the Primary School Curriculum it is assumed that it based on a transcendent element within human experience. Spirituality is linked to religious education and developing spiritual and moral values and a knowledge of god.

In the Introduction to the Primary School Curriculum it states that:

“The spiritual dimension of life expresses itself in a search for truth and in the quest for a transcendent element within human experience. The importance that the curriculum attributes to the child’s spiritual development is expressed through the breadth of learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum, and through the child’s engagement with the aesthetic and affective domains of learning.” (Introduction Primary School Curriculum, page 27)

“The spiritual dimension is a fundamental aspect of individual experience, and its religious and cultural expression is an inextricable part of Irish culture and history. Religious education specifically enables the child to develop spiritual and moral values and to come to a knowledge of God.” (Primary School Curriculum Page 58)

Promoting the moral and spiritual of our children through religious education and bringing them to a knowledge of God breaches our Constitutional and Human Rights as it disrespects our philosophical convictions. As stated by the Irish Episcopal Conference “The integrated curriculum and the Religious Education programme must give expression to the characteristic spirit of the school”.

Atheist and secular parents cannot identify the various areas of the curriculum where religion is integrated and where exactly schools are promoting the moral and spiritual education of our children and consequently we cannot ensure that the teaching of our children is in conformity with our convictions. For example if our children come home saying that god made the world (as some do now), how will we identify where that was taught?

- Was it while they were sitting at the back of the Religious Instruction class?
- Was it during the Education about Religions, Beliefs and Ethics class?
- Was it during another subject such as ‘nature’?
- Was it while they were attending a religious service because there was no supervision?
- Was it during prayer time? Did they just pick it up during the school day?

Schools are not legally obliged to write down exactly where they are integrating their ethos into the various subjects under the curriculum and during the school day. Small children cannot explain and identify how and when they were taught/evangelised to live their lives according to the teachings of a particular god. The very purpose of a religious ethos is to influence children into a religious way of life.

In their Report Religion & Education; A Human Rights Perspective the Irish Human Rights Commission pointed out that:

229. Nonetheless, Barrington J's observation in relation to a child's being influenced by the religious ethos of a school raises a number of questions in the context of this consultation. The use of the phrase "to some degree" might suggest that a school may in fact have some obligation to avoid undue religious influence on a child not of the same religious persuasion as the school, but this is not absolute. In addition, the Court refers to a child who "chooses" to attend the school, and therefore the question arises as to whether this view might have been different if considered in the context of a child with no choice but to attend a denomination school where there is no other option reasonably available where they reside. The case did not explicitly consider the exercise of choice by parents who do not wish to have denominational education for their children, or would seek education in a denomination not available to them which is presumably must equally be protected by Article 42.

230. If Barrington J's judgment suggests that a child of a minority religion, or from a non faith background, with no choice but to attend a Roman Catholic school other than withdrawing from formal religion classes, must in effect accept a form of religious education which offends their convictions, then this would appear to elevate one form of parental choice over another, with the majority religion always dictating the outcome. This could hardly respect the rights conferred on all parents by virtue of Article 42 of the Constitution."

The State has put in place legislation that supports the mission of private Patron bodies to influence children to 'any degree'. The operating rules for schools are set by the State but the Patron controls how those rules are acted upon in schools. Failing to put in place laws and policy that oblige schools to deliver the curriculum in an objective, critical and pluralistic manner is pursuing an aim of indoctrination. We believe that the Irish State is pursuing an aim of indoctrinating by not protecting our human rights and we are concerned that this proposed course will help achieve that aim.

## **12. Conclusion**

We are still extremely concerned with regard to the course and still are seeking an opt out as the legal framework is not in place to ensure respect for the philosophical convictions of atheist/ secular parents. Given the legal framework in Ireland and the fact that we have direct experience of a Religious Education course at second level we request that our right to exempt our children from this course is recognised and guaranteed.

We cannot see how this course will promote respect for our human rights given the fact that the NCCA have no power to ensure that schools deliver this course in an objective, critical and pluralistic manner and in accordance with the Toledo Guiding Principles and human rights law.

Atheist and secular families cannot ensure that the teaching of their children is in conformity with their philosophical convictions given the power that various Patron bodies have over ethos (Characteristic spirit), the Board of Management, the hiring of teachers and school policies. We have no effective remedy to vindicate our rights and we really cannot see how the School Inspectorate has the legal power to ensure that our rights are guaranteed and protected.

The State is not taking sufficient care if they introduce the ERB and ethics course without a legal guarantee that it will be delivered in an objective, critical and pluralistic manner and by ensuring that we have an effective remedy to vindicate our human rights. We are all aware of the issues around ethos and the fact that the Catholic Church objects to the teaching about religion and ethics in an objective manner.

If this new course goes ahead without a legal guarantee then the State will be pursuing an aim of indoctrination by not respecting the philosophical convictions of atheist and secular families as it will not have taken 'sufficient care'. It is on those grounds that we are seeking an opt out from the ERB and Ethics course.

Our experience in relation to the second level Religious Education Course suggests that as an 'organ of the state' the NCCA is not committed to Pluralism and Human Rights. The NCCA continue to stand over the second level RE course when it is clear that it breaches human rights law and disrespects our philosophical convictions.

At the Forum on Patronage and Pluralism the Irish Episcopal Conference stated about this second level RE Course that: <sup>13</sup>

"does give leeway for, definitely open to the concept in its interpretation by way of how a particular school can deliver the programme to the faith formation approach to religious education which is fundamentally would have to be the case from a catholic perspective... (55.20)"

When developing this course the NCCA were aware that the nearly all schools would combine the state course with Catholic religious instruction. In many schools this course is compulsory and it is hard for us to believe that the NCCA did not realise that this would happen and especially given their obligation under Section 41 – 3 (d) of the Education Act 1998. The result of the introduction of this course is that many schools made religion compulsory.

The Education Act 1998 and the Primary School Curriculum guarantees that this proposed new course (ERB and ethics) will not be objective and will undermine our human rights and pluralism in the state. Our education system is structured in a manner which means the practical application of our Constitutional and human rights are ignored.

There are now nine Recommendations from various United Nations and Council of Europe bodies. The State has ignored these Recommendations and continues to disrespect the philosophical convictions of atheist and secular families. Introducing the ERB and Ethics course without amending the Education Act 1998 means that atheist and secular families will have to opt out their children from two courses during the school day. Our children could go from sitting at the back of the class during Religious Instruction straight into sitting at the back of ERB & Ethics with the same teacher.

Patron bodies in Ireland, mainly the Catholic Church have too much control over our Constitutional and Human Rights as the state have abdicated responsibility. We ask again that our right to opt out is recognised and that are children are not forced to take a course where the Catholic Church and other private bodies have excessive control over our rights.

## Notes

- 1 <https://www.education.ie/en/Press-Events/Events/Patronage-and-Pluralism-in-the-Primary-Sector/The-Forum-on-Patronage-and-Pluralism-in-the-Primary-Sector-Report-of-the-Forums-Advisory-Group.pdf>
- 2 <http://www.osce.org/odihr/29154?download=true> (p.69)
- 3 <http://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/print#sec3>
- 4 <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2880760&SecMode=1&DocId=2352880&Usage=2>
- 5 <http://www.ihrec.ie/publications/list/religion-and-education-a-human-rights-perspective/>
- 6 <http://www.ihrec.ie/publications/list/religion-and-education-a-human-rights-perspective/> (page 104)
- 7 [http://www.ihrec.ie/download/pdf/ihrec\\_observations\\_on\\_education\\_admission\\_to\\_schools\\_bill\\_2015.pdf](http://www.ihrec.ie/download/pdf/ihrec_observations_on_education_admission_to_schools_bill_2015.pdf)
- 8 Fifth Section - Decision - Application no. 35810/09 Louise O'Keeffe against Ireland
- 9 <https://www.education.ie/en/Press-Events/Events/Advancing-School-Autonomy-in-Ireland/School-Autonomy-Research-Paper.pdf>
- 10 <http://www.education.ie/en/Schools-Colleges/Information/Boards-of-Management/Governance-Manual-for-Primary-Schools-2015-2019.pdf>
- 11 <http://www.education.ie/en/Press-Events/Press-Releases/2014-Press-Releases/PR14-07-01.html>
- 12 [https://www.education.ie/en/Press-Events/Events/Patronage-and-Pluralism-in-the-Primary-Sector/Patronage-Forum-Submissions-November-2011-/fpp\\_ceiec\\_17nov2011.pdf](https://www.education.ie/en/Press-Events/Events/Patronage-and-Pluralism-in-the-Primary-Sector/Patronage-Forum-Submissions-November-2011-/fpp_ceiec_17nov2011.pdf)
- 13 <https://media.heanet.ie/page/945a5fbb23e1461ebc8efa87272fd930>