

Religion and Belief in the Charities (Amendment) Bill 2022



**Submission from Atheist Ireland
to the Joint Committee on Social Protection,
Community and Rural Development and the Islands**

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Contents

1. Introduction to Atheist Ireland	2
2. Our recommendation	2
3. Amend 'Religion' to 'Religion or Belief'	3
4. The Constitution protects philosophical and religious thought	4
5. What the courts have said about Freedom of conscience	4
6. The Venice Commission	5
7. The EU Employment Equality Directive	6
8. The Charter of Fundamental Rights	6
9. The European Convention on Human Rights	7
10. The International Covenant on Civil & Political Rights	8

1. Introduction to Atheist Ireland

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 discriminate against or support or finance or give special treatment to any religion or belief.

Since being formed in late 2008, we have campaigned for a secular human rights based Irish Constitution, parliament, laws, and government, with particular emphasis on our education system which discriminates systemically on the ground of religion. We are part of the dialogue process between the Government and religious and nonreligious philosophical bodies.

We led a successful decade-long campaign to remove the crime of blasphemy from the Irish Constitution. The 37th Amendment to the Constitution Bill was brought to Dáil Éireann and the Irish public passed the amendment in a referendum in 2018. The Blasphemy (Abolition of Offences and Related Matters) Act was passed in 2019.

We base our policies on human rights standards. We have addressed the United Nations Human Rights Council and we take part in sessions of various UN Committees. We have successfully had human rights based recommendations made based on our submissions to these committees. We have also made submissions to the OSCE and the Council of Europe.

2. Our Recommendation

Amend the 'Religion' category to 'Religion or Belief', and include the same positive explicit protection for people with nonreligious philosophical convictions as is included for religious people.

In the Venice Commission Guidelines for Legislative Reviews of Laws Affecting Religion or Belief includes it states that:

“3. Religion or belief

International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world.

Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers.

Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.”

3. Amend ‘Religion’ to ‘Religion or Belief’

Head 4: Amendment of section 3 of Act of 2009 proposes to insert ‘human rights’ as a category. We support this inclusion.

We believe the the category of ‘religion’ should also be amended to ‘religion or belief’.

This is the description used in human rights law. It recognises that the right to hold positive nonreligious philosophical convictions or worldviews, that are worthy of respect in a democratic society, is protected in the same way as the right to religion is.

Both the Irish Constitution and human rights law recognises and protects the right to freedom of conscience, religion and beliefs of all. There is no hierarchy of rights here. The Constitution and human rights law treats religions and beliefs equally. Under the Constitution the state cannot discriminate between those who have a religion and those who have no religious beliefs.

The Charities Act gives privilege to religious bodies over bodies that promote atheism, humanism and secularism on the basis of conscience. Atheism, humanism and secularism are recognised as beliefs or philosophical convictions under human rights law. The Irish courts have said that Article 44 protects those with philosophical convictions.

This is religious discrimination, forbidden by the Constitution and not in accordance with Ireland’s human rights commitments. We ask that the Charities Act 2009, which includes the advancement of religion but not of beliefs, be amended to reflect this.

On page 10 of the Bill it states that:

“Section 3(1) of the Charities Act 2009 (hereafter ‘2009 Act’) defines charitable purpose as:

- a) the prevention or relief of poverty or economic hardship;
- b) the advancement of education;
- c) the advancement of religion;
- d) any other purpose that is of benefit to the community.

These definitions were originally set out in 1891 during a court case in the United Kingdom (Commissioners for Special Purposes of Income Tax v Pemsel), and have remained largely unchanged in Irish legislation since.”

Non religious bodies such as Atheist Ireland are not covered under this category, and neither is any non religious body that promotes secularism or humanism.

Inserting the category of 'religion or belief' into the new Bill will not undermine religious belief. It will support the right to 'freedom of religion or belief' and the right to be free from religious discrimination.

An example of the privilege that the State gives to religious bodies is that they can register as charities in order to promote religious schools. However, nonreligious bodies cannot register as charities in order to promote secular schools.

Yet it is non religious families who suffer religious discrimination in the education system while the state continues to give privilege to religious charities and discriminates against nonreligious bodies that promote secular schools on the basis of conscience.

4. The Constitution protects philosophical and religious thought

The courts have recognised that Article 44.2.1 protects parents with philosophical convictions.

In the High Court in 2011, Justice Hogan stated that:

“35. There is thus no doubt at all but that parents have the constitutional right to raise their children by reference to their own religious and philosophical views.”

“27. Along with the guarantee of free speech in Article 40.6.i, Article 44.2.1 guarantees freedom of conscience and the free practice of religion. Taken together, these constitutional provisions ensure that, subject to limited exceptions, all citizens have complete freedom of philosophical and religious thought, along with the freedom to speak their mind and to say what they please in all such matters....”

(AB v Children’s Hospital Temple Street & CD & EF –January 2011

As the Constitution protects those with philosophical convictions there is no reason for the state to give privilege only to religious bodies. It is religious discrimination to give privilege to religious bodies and not to nonreligious bodies with philosophical convictions.

5. What the courts have said about Freedom of conscience

Article 44.2.1 states that:

“Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.”

In McGee v Attorney, Justice Walsh stated that:

“The whole context in which the question of conscience appears in Article 44 is one dealing with the exercise of religion and the free profession and practice of religion. Within that context, the meaning of Article 44.2.1^o is that no person shall directly or indirectly be coerced or compelled to act contrary to his conscience in so far as the practice of religion is concerned and, subject to public order and morality, is free to profess and practise the religion of his choice in accordance with his conscience. Correlatively, he is free to have no religious beliefs or to abstain from the practice or profession of any religion.”

Article 44.2.3 states that:

“The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.”

This article prohibits discrimination between religious persons and non-religious persons.

In *Mulloy v Minister for Justice Walsh* stated in the Supreme Court that:

“The present case concerns the disposition of public funds on a basis which, if sustainable, enables a person who is not a religious to obtain greater financial reward than a person who is a religious and is otherwise doing the same work and is of equal status and of length of service, or recognised service in the case of a teacher.

If that were constitutionally possible it would enable the State to prefer religious to lay people, or vice-versa, in a matter which is in no way concerned with the safeguarding or maintenance of the constitutional right to free practice of religion or freedom of conscience or of profession of religion.

In my view, the State is not permitted by the Constitution to do this. The reference to religious status, in both the Irish text and the English text of the Constitution, relates clearly to the position or rank of a person in terms of religion in relation to others either of the same religion or of another religion or to those of no religion at all.

Thus it ensures that, no matter what is one's religious profession or belief or status, the State shall not impose any disabilities upon or make any discrimination between persons because one happens to be a clergyman or a nun or a brother or a person holding rank or position in some religion which distinguishes him from other persons whether or not they hold corresponding ranks in other religions or whether or not they profess any religion or have any religious belief, save where it is necessary to do so to implement the guarantee of freedom of religion and conscience already mentioned.”

Justice Barrington stated in the Supreme Court in *Corway v Independent Newspapers* that:

“The Constitution also introduced (in Article 40.1) a specific guarantee of equality before the law to all citizens as human persons. The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion.

At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics, Protestants, Jews, Muslims, agnostics or atheists. But Article 44 goes further and places the duty on the State to respect and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality.”

6. The Venice Commission

As mentioned earlier, in the Venice Commission Guidelines for Legislative Reviews of Laws Affecting Religion or Belief includes it states that:-

“3. Religion or belief.

International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world.

Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers.

Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.”

7. The EU Employment Equality Directive (Council Directive 2000/78/EC)

This refers specifically to 'religion or belief' in a way that equally respects the positive rights of atheists, secularists, and all those with beliefs/philosophical convictions based on their conscience. It states that:

"The purpose of this Directive is to lay down a general frame-work for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment."

"11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons."

"(29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts."

"Article 4 — Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos."

8. The Charter of Fundamental Rights

This includes:

Article 10 — Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others

and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 20 - Equality before the law

Everyone is equal before the law.

Article 21 - Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

9. The European Convention on Human Rights

The European Court has already found that secularism is a belief/philosophical conviction protected by Article 9 of the Convention, along with other convictions — see list on Guide on Article 9 of the European Convention on Human Rights.

Article 9 of the European Convention states:-

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Case of Lautsi v Italy European Court 2011

“58. 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 (*ibid.*).”

Case of Hamidovic v. Bosnia and Herzegovina 2018 - European Court:-

“35. The applicant took the view that the interference with the exercise of his freedom to manifest his religion did not correspond to any of the aims listed in Article 9 § 2. The Government maintained, for their part, that the impugned measure pursued two legitimate aims: to protect the rights and freedoms of others; and to maintain the authority and impartiality of the judiciary.

The Court notes that the second paragraph of Article 9 does not refer expressly to the second of those aims. As regards the first of the aims invoked – to ensure the protection of the rights and freedoms of others – the Government referred to the principle of secularism and the need to promote tolerance in a post-conflict society.

The Court has already held that secularism is a belief protected by Article 9 of the Convention (see *Lautsi and Others v. Italy* [GC], no. 30814/06, § 58, ECHR 2011) and that an aim to uphold secular and democratic values can be linked to the legitimate aim of the “protection of the rights and freedoms of others” within the meaning of Article 9 § 2 (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 99, ECHR 2005XI, and *Ahmet Arslan and Others v. Turkey*, no. 41135/98, § 43, 23 February 2010). There is no reason to decide otherwise in the present case.”

The following is a list of European Court cases where various philosophical convictions were recognised and are protected by Article 9 of the Convention. See Council of Europe handbook on Article 9 of the European Convention.

“18. Article 9 applies to the aforementioned beliefs and doctrines regardless of whether the respondent State officially recognises them as “religions”; to assume the contrary would be to consider that the State can exclude them for the protection of Article 9 by refusing to recognise them (*Mockutė v. Lithuania*, § 119).

“17. The organs of the Convention have explicitly or implicitly acknowledged that the safeguards of Article 9 § 1 of the Convention apply to:

(c) various coherent and sincerely-held philosophical convictions, such as

- attachment to secularism (*Lautsi and Others v. Italy* [GC], § 58; *Hamidović v. BosniaHerzegovina*, § 35)
- pacifism (*Arrowsmith v. the United Kingdom*, Commission report, §69) principled opposition to military service (*Bayatyan v. Armenia* [GC])
- veganism and opposition to the manipulation of products of animal origin or tested on animals (*W. v. the United Kingdom*, Commission decision)
- opposition to abortion (*Knudsen v. Norway*, Commission decision; *Van Schijndel and Others v. the Netherlands*, Commission decision)
- a doctor’s opinions on alternative medicine, constituting a form of manifestation of medical philosophy (*Nyyssönen v. Finland*, Commission decision)
- the conviction that marriage is a lifelong union between a man and a woman and rejection of homosexual unions (*Eweida and Others v. the United Kingdom*)”

10. The International Covenant on Civil & Political Rights

Article 18 of the ICCPR states:-

“1. 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 teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of

parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

The UN General Comment on Article 18 of the ICCPR states that:

“2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.

The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”