

Atheist Ireland



To: Heather Humphreys
Minister for Social Protection

11 May 2023

Dear Minister Humphreys,

We would like to meet with you to discuss the discrimination on the ground of religion or belief in the Civil Registration Act.

When the Civil Registration (Amendment) Act 2012 was being debated in the Oireachtas, Atheist Ireland wrote to all TDs (letter attached) outlining two types of discrimination it contained — firstly, in favour of religious bodies against secular bodies, and secondly, in favour of humanist secular bodies against atheist secular bodies.

In our submission then we summarised:

“We welcome the intention of this Bill to make our law more inclusive. However, in practice the Bill accepts and further institutionalises discrimination on the ground of religion or belief. It continues the discrimination in the Act that it is amending, which is discrimination in favour of religious people and against nonreligious people, and it adds new discrimination, this time between nonreligious people who have different philosophical and non-confessional beliefs.”

The concerns that we expressed then have been reinforced by developments since.

We are attaching the latest marriage figures from the Central Statistics Office. As you will note from these figures the nature of marriages in Ireland has changed dramatically since the introduction of the Civil Registration amendment Act in 2012. The majority of marriages are now either secular or non-traditional-religious marriages.¹

According to the Minister at the time, Joan Burton, the Bill (now Act) “respects the obligation of the State to safeguard the institution of marriage and ensures the bodies involved are stable, long-standing and reputable organisations”.

We recognise the legitimate aim of the state to safeguard the institution of marriage under Article 41.3.1 — The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

However, we believe that the discrimination between secular and religious bodies is not a proportionate means of achieving this legitimate aim, especially given the diversification of religious marriages.

Different standards for secular and religious bodies

While the range of religious bodies solemnising marriages reflects the increasing plurality of religious beliefs in Ireland, the secular bodies solemnising marriages do not, as there are much stronger restrictions on secular bodies than religious bodies who wish to solemnise marriages.

¹ <https://atheist.ie/2023/05/the-62-types-of-wedding-ceremonies-in-ireland-in-2022/>

A body can only be a secular body for the purposes of the Act if:-

- it has not fewer than 50 members
- its principal objects are secular, ethical and humanist.
- it is a body that, on the date of its making of an application under section 54 or 57, has been in existence for a continuous period of not less than 5 years,
- it maintains a register of its members.
- it does not promote a political cause.

None of the above applies to religious bodies. 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.

When the Civil Registration Amendment Act 2012 was being debated in the Oireachtas the then Government claimed that this discrimination has a legitimate aim, which is to ensure that the institution of marriage is protected. During the debate in the Dail the then Minister Joan Burton told the Dail that the reason for this discrimination was as follows:

“Another concern I had about some of the material in the submission from Atheist Ireland is that we must be specific about the criteria because there are places in the United States where the criteria for solemnising are very broad and, as a result, an Elvis impersonator in Las Vegas can perform wedding ceremonies. None of us wants anything like that here. There is all-party agreement on that point.

The question was asked why secular bodies are required to fulfil more criteria than religious bodies. The purpose of the Bill is to amend the provisions of the Civil Registration Act 2004 and the Bill sets out criteria that secular bodies must meet so they can apply to have their members included on the Register of Solemnisers. The inclusion of secular bodies on the register has not been addressed previously and the legislation is designed to ensure the institution of marriage is protected by applying a rigorous set of rules regarding the type of body that can be deemed eligible. In this regard, it is important that the criteria should be robust so that the authority to solemnise marriage would be granted only to stable, long-standing and reputable organisations. I am pleased to bring this Bill before the Dáil today.

“This Bill will provide that valid marriages can be performed by bodies that fulfil the criteria of a secular body, as laid down in the legislation, reflecting the varied belief systems in a modern society which still holds marriage as a valuable life choice. In this regard, the Bill extends the definition of the term "body" in relation to marriages to include also a "secular body". It sets out criteria which must be met by a body before it can apply to have one of its members solemnise marriage. While this limits somewhat the bodies that would be eligible, it respects the obligation of the State to safeguard the institution of marriage and ensures the bodies involved are stable, long-standing and reputable organisations.”

This requirement (to ensure that “the bodies involved are stable, long-standing and reputable organisations”) only applies to secular bodies. There is no such test for religious bodies. Also, even within secular bodies, Atheist Ireland (who do meet these requirements) could not be a solemnising body as the Act requires secular bodies to be humanist. However, both the Irish Constitution and the European Convention protect beliefs/philosophical convictions. Atheism and secularism are recognised as beliefs/philosophical convictions under the European Convention as are pacifism and veganism. We do not see how the discrimination in the Act is proportionate.

Some relevant court judgments

In the High Court in 2011 (AB v Children’s Hospital Temple Street & CD & EF), 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....

Justice Whelan in the Court of Appeal in the Burke case on 7th March 2023 stated that:

39. Article 9(1) of the Convention protects the right of freedom of thought, conscience and religion including freedom to manifest religion or belief. Article 9(2) provides certain limitations which in substance acknowledge that the manifestation of faith/religion or beliefs may impact upon others which warrant the delimitation of the protections afforded by Article 9(1).

Justice Walsh in the Supreme Court in Mulloy v Minister for Education 1975 stated:

“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 length of service...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...

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.”

Conclusion

The Act has meant that the religious category reflects the varied religious belief systems in a modern society. However, only two secular bodies are registered: the Humanist Association of Ireland and Aisling Arann Teoranta. The reason for this is that the criteria in place is too restrictive and was put in place to accommodate the Humanist Association of Ireland in particular.

Other long standing bodies promoting beliefs/philosophical convictions are discriminated against because the criteria is too restrictive. This has resulted in a curtailment of the plurality of secular groups solemnising marriages.

Yours sincerely,

Jane Donnelly
Human Rights Officer

Michael Nugent
Chairperson