

Submission from Atheist Ireland to Seanad Public Consultation Committee on the Constitutional Future of the Island of Ireland



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1. Executive Summary

1.1 Atheist Ireland is an advocacy group for atheism, reason and ethical secularism. We promote the political cause of separation of church and state as a primary aim. We are participants in the dialogue process between the Government and religious and philosophical bodies. We work on secular issues alongside the Evangelical Alliance of Ireland and the Ahmadiyya Muslim Community of Ireland. We participate in events organised by international bodies such as the United Nations, the European Union, the Council of Europe and the OSCE.

1.2 One of the most striking features of the Irish Constitution is its overt theistic, religious, Christian, and Roman Catholic character. This is a result of the political personnel and culture of the Ireland of the 1930s, and it is entirely inappropriate for the Ireland of the 21st century. In recent years we have made some important amendments to Articles unduly influenced by Catholicism. We should continue to make further amendments in this context.

1.3 Atheist Ireland wants a secular Irish Constitution, which respects equally the right of every citizen to our religious or nonreligious philosophical beliefs, with the State remaining neutral on these beliefs. Religious States promote religion, atheist States promote atheism, and secular States promote neither, but respect equally the right of each citizen to hold and manifest their personal beliefs. In a pluralist democratic society such as Ireland, a secular Constitution is the only way to protect equally the rights of religious and nonreligious people.

2. Recommendations

2.1 In the High Court in 2011, in the case of AB v Children's Hospital Temple Street & CD & EF, Justice Hogan stated that: "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..."

2.2 Our recommendations seek to make explicit, in other Articles, the constitutional determinations made by Justice Hogan in this case about freedom of conscience and philosophical thought.

2.3 Categories of recommendations

- (a) Remove specific references to God, such as all authority coming from the Holy Trinity and our obligations to our divine Lord Jesus Christ (Preamble); powers of government deriving under God from the people (6); the homage of public worship being due to Almighty God and the state holding his name in reverence (44); and the glory of God (Closing Line).

(b) Replace all religious oaths for public officeholders with a single neutral declaration that does not refer to either the religious or nonreligious philosophical beliefs of the person. As well as President (12), Council of State (31) and Judges (34), please note that there is also in practice a religious oath for Taoiseach, Tánaiste, Chair of the Dail and Seanad, and Attorney General, as these officeholders are obliged to be members of the Council of State and are thus obliged to swear the oath for that office.

(c) Amend the Articles on Fundamental Rights to explicitly give equal protection to religious and nonreligious philosophical believers, particularly where the Articles are unduly influenced by Roman Catholic teachings. This includes the Articles on equality (40), the family (41), education (42) and religion (44). Frame Articles generally so that they are based on human rights and duties and not on religious beliefs.

2.4 Specific Recommendations

2.5 Remove References to God

- Remove the religious references from the Preamble. Ideally, amend the Preamble to simply state: “We the people of Ireland enact this Constitution.”
- Remove the words “under God” from Article 6.1
- Delete Article 44.1 which says the homage of public worship is due to Almighty God.
- Remove the reference to the Glory of God from the closing line.

2.6 Replace Religious Oaths for Office Holders

- Replace each of the religious oaths for public office holders with a single declaration of loyalty to the Irish Constitution, State, laws, and people, that does not reveal any information about the person’s religious or nonreligious philosophical beliefs.

2.7 Amend Articles on Fundamental Rights

- Amend Article 40 (equality) to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds (such as race, sex, language or religion).
- Amend Article 41 (the family) to remove the reference to mothers having and neglecting duties in the home.
- Amend Article 42 (education) comprehensively to explicitly give equal protection to religious and nonreligious philosophical believers.
- Amend Article 42.1 to explicitly give equal protection to married and unmarried parents.
- Change the heading of Article 44 from ‘religion’ to ‘Religion and Beliefs’
- Amend Article 44 (religion) comprehensively to explicitly give equal protection to religious and nonreligious philosophical believers.
- Delete Article 44.1 which says the homage of public worship is due to Almighty God.
- Amend Article 44.2.3 to include nonreligious philosophical beliefs.

3. Remove Specific References to God

3.1 The Preamble to the Constitution is unambiguously sectarian, and is not appropriate for a pluralist democratic Republic. It attributes all authority to the Most Holy Trinity, and acknowledges our obligations to our Divine Lord, Jesus Christ.

3.2 The Preamble is part of the Constitution, and it can be amended by referendum. The Attorney General’s Committee on the Constitution (1968) noted that the Preamble itself uses the phrase ‘this Constitution’ and that the title ‘Bunreacht na hÉireann’ precedes the Preamble, both of which suggest that the Preamble is part of the Constitution. The Preamble has also been cited in legal cases and judicial decisions.

3.3 Article 6.1 states: “All powers of government, legislative, executive and judicial, derive, under God, from the people...” The phrase ‘under God’ should be removed.

3.4 Article 44.1 states: “The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.” We address this in more detail in the section below on fundamental rights,

3.5 The closing line states: “Dochum Glóire Dé agus Onóra na hÉireann (For the Glory of God and the Honour of Ireland)”. The phrase ‘Glóire Dé’ should be removed.

4. Replace Religious Oaths for Public Office Holders

4.1 Article 12.8 requires the President to enter upon the office by taking and subscribing publicly to a declaration that begins “In the presence of Almighty God I do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland...” and ends with the words “May God direct and sustain me.”

4.2 Article 31.4 requires every member of the Council of State, at their first meeting, to take and subscribe publicly to an oath that begins “In the presence of Almighty God I do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State.”

4.3 Article 34.5.1 requires every person who is appointed a judge to make and subscribe a declaration that begins “In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my power...” and ends with the words “May God direct and sustain me.”

4.4 Problems with alternative oaths

4.5 The option of providing public office holders with two alternative declarations, one religious and one neutral, is not appropriate for three reasons.

(a) A public office holder should not be obliged to reveal his or her religious or nonreligious philosophical beliefs. Instead, they should be office holders for all of the people, representing the State, which itself has no religious beliefs.

(b) If alternative declarations were to be provided, the opposite to a theistic oath would not be a neutral declaration. The opposite to a theistic oath would be a declaration that there is no God. If you realise why it would be inappropriate for the President to swear that there is no God, then you should also realise why it is inappropriate for the President to swear that there is a God.

(c) In particular for Judges, if there were some Judges who were known to have opted to ask God to direct and sustain them in their duties, and some Judges who had opted to not do this, then it could be impossible to find a Judge (from either group) who would be publicly viewed as impartial to hear any case that involved making rulings on questions related to religion.

4.6 The oaths encompass the Taoiseach, Tánaiste and others

4.7 Article 31.2 states that “The Council of State shall consist of the following members: i. As ex-officio members: the Taoiseach, the Tánaiste, the Chief Justice, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General.”

4.8 This means that there is also a religious oath for Taoiseach, Tánaiste, Chairman of the Dail, Chairman of the Seanad and Attorney General, as these officeholders are obliged to be members of the Council of State and are thus obliged to swear the oath for that office.

4.9 This additional obligation became clear when Tanaiste Eamon Gilmore became the first person who is publicly on record as saying that he does not believe in God had to attend his first meeting of the Council of State and had to swear the religious oath.

4.10 Mr Gilmore stated that he had taken legal advice, that he respected the Constitution, and that he would comply with his constitutional obligations. These obligations include not only swearing the oath at his first Council of State meeting under Article 31.4, but also being a member of the Council of State under Article 31.2.

5. Amend Articles on Fundamental Rights

5.1 Article 40.1 Equality

5.2 Article 40.1 states: "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

5.3 The way that equality is protected under article 40.1 is inconsistent with the principle of nondiscrimination. In 2002 the United Nations committee on economic social and cultural rights stated that:

"16. The Committee regrets that the State party [Ireland] has not yet undertaken any measures with regard to the Committee's 1999 recommendation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant."

5.4 Article 41 The Family

5.5 Article 41.2.2 states: "The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home." This is anachronistic and should be removed or amended to use non-sexist language.

5.6 Article 42 Education

5.7 We recommend that Article 42, on Education, be amended comprehensively to explicitly give equal protection to religious and nonreligious philosophical believers.

5.8 Under the European Convention, the State has a positive obligation to respect the philosophical convictions of secular parents in the education system.

5.9 Article 42.1 states that: "The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children."

5.10 According to the Constitution Review Group Report in 1995 this Article only applies to married parents. They said it should be amended to apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.

5.11 Article 44 Religion

5.12 Heading: Changing the heading from 'Religion' to 'Religion and Beliefs'. The current heading gives privilege to religious beliefs over nonreligious philosophical beliefs including atheism.

5.13 Article 44.1 states: "The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion." This is an extraordinary assertion to have in the Constitution of a democratic Republic. It does not

enshrine the right of citizens to publicly worship a God, but enshrines the right of that God to be publicly worshipped.

5.14 The 1996 Constitutional Review Group found that: “In effect, this section imposes an obligation on the State to refrain from engaging in what might loosely be termed ‘atheistic propaganda’ and prevents the State from adopting a policy which is actively hostile to religion.” But atheistic beliefs are as much protected by the human right to freedom of conscience as are religious beliefs. In order to protect equally the beliefs of all citizens, the State should not engage in “what might be loosely described as” either atheistic or religious propaganda. It should equally respect the rights of theists and atheists to hold and democratically manifest their beliefs.

5.15 UN General Comment No. 22: The right to freedom of thought, conscience and religion on Article 18 of the ICCPR states:

“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.”

5.16 Article 44.2.3 states: “The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.” This prevents the state from discriminating between one religion and another religion, but it does not prevent the state from discriminating between religions and nonreligious philosophical convictions. We recommend it be amended to explicitly include nonreligious philosophical convictions.

5.17 The ECHR has stated that the secular viewpoint is worthy of respect in a democratic society, and must be regarded as a “philosophical conviction” within the meaning of the Convention:

“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. 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.”