

# Atheist Ireland



To: Paraic Joyce  
Department of Education

5 October 2021

## Circular Letter 0062/2018

Dear Paraic,

We are writing to ask you to withdraw Circular Letter 0062/2018 as it is not in accordance with the Constitution and the findings of the Supreme Court.

The Department of Education cannot decide for parents what is or is not suitable for their children in relation to Religious Education or decide whether there is a need for parents to withdraw their children.

Circular Letter 0062/2018 states that:

“Religious Education, where it is offered by a school, must be delivered in the timetabled class periods without any religious instruction or worship of any religion forming any part of class activity. This means that any practice or material that would introduce religious instruction or worship cannot be used in the future. Religious Education will be subject to inspection including its delivery according to this circular. This clear separation of religious instruction from the NCCA Religious Education syllabus has the effect of ensuring that withdrawal does not arise for students studying the NCCA Religious Education syllabus where the school provides the subject as part of its normal range of subjects.”

Justice Barrington in the Supreme Court case Campaign to Separate Church and State v Minister for Education 1998 stated that:

“But the matter does not end there. Article 42 of the Constitution acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of the parents to provide for the religious and moral, intellectual, physical and social education of their children. Article 42 S.2 prescribes that the parent shall be free to provide “this education” (i.e. religious moral intellectual physical and social education) in their homes or in private schools or “in schools recognised or established by the State”. In other words the Constitution contemplates children receiving religious education in schools recognised or established by the State but in accordance with the wishes of the parents.

It is in this context that one must read Article 44 “.2s.s.4 which prescribes that: Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.”

The Supreme Court found that the rights of parents in relation to the religious education of their children under Article 42.1 must be read in the context of Article 44.2.4 – the right to not attend religious instruction. The Department of Education has no right to decide for parents what is or is not suitable religious education for their children or whether there is the need for parents to withdraw their children from it.

In the recent *Burke v Minister for Education* case in March this year the Court of Appeal recognised the connection between Article 42.1 and Article 41 which obliges the State to protect the family in its authority. It's simply not the function of the State to develop attitudes and values in children from atheist or secular families to enable them to come to an understanding of religion and its relevance to life, relationships, society and the wider world if that is against their conscience.

We appreciate that this case has been appealed to the Supreme Court but this particular point will not change regardless of the outcome. The Court of Appeal in the *Burke* Case stated that:

“Under Article 41.1.2 the State guarantees to protect the family, in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State. As we have seen, the relevance of the family provisions was recognised by the Supreme Court in the case of *In re Article 26 and School Attendance Bill, 1942*. In *DPP v. Best, Denham J.* in her judgment, one of five delivered, stated that “(t)he distinct place of the family in Irish society is a factor to be weighed in all relevant decisions.” Two other judges of the Supreme Court either expressly agreed with her judgment or held that the relevant provisions of Article 42 must be read in the context of the special recognition granted to the family in Article 41.1.1.”

The Department of Education has simply no Constitutional authority to decide for parents what is or is not suitable religious education for their children. The right to not attend religious instruction must be read in the context of Article 42.1. The relevant provisions of Article 42 must be read in the context of the special recognition granted to the family in Article 41.1.1.

The main aim of the Religious Education course updated in 2019 is:

“Religious Education aims to develop knowledge, understanding, skills, attitudes and values to enable young people to come to an understanding of religion and its relevance to life, relationships, society and the wider world. It aims to develop the students’ ability to examine questions of meaning, purpose and relationships, to help students understand, respect and appreciate people’s expression of their beliefs, and to facilitate dialogue and reflection on the diversity of beliefs and values that inform responsible decision-making and ways of living.”

If the main aim of any curriculum course was to develop knowledge, understanding, skills, attitudes and values to enable young people to come to an understanding of atheism and its relevance to life, relationships, society and the wider world then it would be seen as breaching the rights of parents under Article 42.1 of the Constitution and Article 41.1.1. It would also be seen as discrimination forbidden by Article 44.2.3 of the Constitution.

The main aim of the Religious Education course introduced in the year 2000 to schools was to develop the moral and spiritual values of all children through religious education; it just acknowledged the non religious interpretation of life.

We do not see how any educational need can override the constitutional rights of parents in relation to the religious education of their children. The Constitution does not even oblige the State to ensure that all children receive a basic religious education, as that is the absolute right of parents (Article 42.3.2).

Constitutional issues around discrimination and endowment of religion under Article 44.2.2 and Article 44.2.3 were raised by the Department of Education long before a curriculum religious course was introduced to schools in 2000.

In a letter dated 1994 (attached) the Department of Education said that the State would need weighty, objective arguments to justify the course on educational grounds. At the time the Department of Education did not give any consideration to the constitutional rights of atheist and secular parents who also have Constitutional rights regarding the moral education of their children (Article 42.1 - Article Article 44.2.1) which are not based on a religious understanding of the world.

Given the Constitutional rights of parents in relation to the education of their children (Article 42.1) and the rights of families (Article 41.1.1) we simply cannot understand what weighty, objective arguments you had for developing understanding, skills, attitudes and values in our children to enable them to see the relevance of religion to life, relationships, society and the wider world when we object on conscientious grounds to that aim. Nor can we understand why the Department claims that withdrawal from the course does not arise.

We look forward to hearing from you.

Yours sincerely,

Michael Nugent  
Chairperson  
Atheist Ireland

Jane Donnelly  
Human Rights Officer  
Atheist Ireland

Attached below:

Letter from Department to NCCA, 1994.

Freagra ar bith a sheoladh go dtí—  
[Any reply to be addressed to:—]

AN RÚNÁL,  
An Roinn Oideachais,  
Baile Átha Cliath 1.

Faoin uimhir seo:—  
[and the following number  
quoted:—]

10 March, 1994

Mr. Albert Ó Ceallaigh,  
Chief Executive,  
National Council for Curriculum and Assessment,  
Dublin Castle,  
Dublin 2.

Dear Albert,

I understand that you have recently raised the issue of religion as a Leaving Certificate examination subject with Pat Keating and that you have asked Tom Boland to arrange a meeting at which this subject can be discussed. We will be glad to meet you at any mutually convenient time. Before we do so however, it may be useful if I set out some of the legal considerations which in our view arise from this proposal.

The most obvious issue to address in this context is the effect of section 5 of the Intermediate Education (Ireland) Act, 1878, which prohibits the holding of an examination in religious instruction and State support for such an exam. The primary aim of this provision appears to have been to prevent public funds being spent on denominational education. Although the legislation is now quite old and in many respects outdated, this particular provision has not been repealed. The Intermediate Education Board for Ireland which was established by the legislation was dissolved in 1923 and its powers and functions passed to the Minister for Education under the Ministers and Secretaries Act, 1924. The Rules and Programme for Secondary Schools issued by the Minister have their statutory basis in the Act. Our advice is that the provisions relating to examinations in religious instruction have not lapsed and would have to be repealed before examinations could be held in religion.

This statutory provision, although requiring appeal, at least has the virtue of certainty. No such certainty attends the constitutional issues raised by the proposal. Earlier proposals for the content of this course focussed on Christian religions. It could therefore be open to a non-Christian student to claim that his Christian counterparts have available to them a course which for reasons of conscience he or she cannot avail of. On these grounds it could be claimed that the examination amounted to the State, contrary to Article 44.2.3 of the Constitution, imposing a disability or making a discrimination on the grounds of religion.



*File with the*  
AN ROINN OIDEACHAIS,  
(Department of Education).

SRAID MAOILBHIRÍDE,  
(Marlborough Street).

BAILE ÁTHA CLIATH 1.  
(Dublin 1).

Tel: (01) 8724700  
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*Dr. Peter Blaney  
is my contact  
o confidential - not for consultation  
o would like to discuss x with you  
Albert  
14/3  
'94*

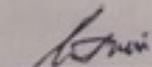
In considering a claim of discrimination in this context, a court could be expected to enquire into the **educational** need for the course, however desirable and valuable it may otherwise be. It is also unlikely that a court would be convinced by the argument that the examination came within the provisions guaranteeing free profession of religion, as it could hardly be said that that the proposed course was necessary for the free practice and profession of the Christian religions. In defending the course and examination before the courts the State would need weighty, objective arguments to justify it on educational grounds. In deciding whether or not to introduce this course, it may be desirable that this Department and the NCCA marshal these arguments so that the strength of the constitutional position can be fully assessed.

In addition to this issue of discrimination, the proposed course raises issues of endowment of religion contrary to Article 44.2.2 of the Constitution. The denominational structure of our educational system is, in all probability, underpinned by the Constitution to an extent which would defeat any claim that State support for denominational schools, per se, amounted to an unconstitutional endowment of religion. A court is likely to take the view that, to the extent that such support represents endowment, the funding of denominational education and the teaching of religion is necessary to uphold the rights of parents to provide for the religious and moral education of their children and the right to freedom of religious expression. In doing so however, a court might also take the view that there should be an endowment of religion only to an extent which is objectively necessary and proportionate to the aim of inculcating moral and religious principles. A formal course of studies, leading to a formal State funded examination could well be considered to go beyond what could be considered necessary for that limited purpose.

These are preliminary views only, based largely on advice received some time ago. That advice would clearly need to be up-dated and reconsidered in the light of present proposals. Regard must also be had to the judicial review proceedings in respect of chaplains in Community Schools. The issues raised by that case are in some respects comparable to the issues outlined above. I understand however, that while this case is still making its way through the legal system it is unlikely to be heard for another twelve to eighteen months, so it is unlikely to give us much assistance in gaining an insight into the High Court's view of these issues

If you would like to discuss these issues or any other aspect of this proposal please contact Tom Boland who will make the necessary arrangements.

Yours sincerely,

  
Micheál Ó Néill,  
Assistant Secretary