

Atheist Ireland



Follow-up Document
for ETBI after our
Meeting on 9 Sept 2019

Contents

1. Introduction	3
2. The Right to Respect	9
3. Respect is for People, Not Beliefs	23
4. The Campaign Case	27
5. Faith Formation in ETBs	31
6. Notes	37

1. Introduction

Under Constitutional and Human Rights law the meaning of such words as Respect, Religious Instruction, Religious Education, Indoctrination etc., are not the same as the way that they are used informally in Irish politics or the Education system. In Human Rights law these words are based on the Court's General Principles and case law. Under the Irish Constitution these terms are reflected in the Campaign case at the Supreme Court. This is the reason that we sometimes seem to be talking at cross purposes.

Note: In this document, where we use such words, we capitalise them to remind the reader that they are words with definitions in Human Rights law. We don't capitalise them when quoting others, to preserve the integrity of the quote.

Human Rights are basic Rights for the protection of the individual citizen. The European Court has stated that these Rights are not theoretical or illusory but Rights that are practical and effective.

The European Court in Airey v Ireland para.24 1979 stated that: ¹

"The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, mutatis mutandis, the judgment of 23 July 1968 in the "Belgian Linguistic" case, Series A no. 6, p. 31, paras. 3 in fine and 4; the above-mentioned Golder judgment, p. 18, para. 35 in fine; the Luedicke, Belkacem and Koç judgment of 28 November 1978, Series A no. 29, pp. 17-18; para. 42; and the Marckx judgment of 13 June 1979, Series A no. 31, p. 15, para. 31)."

The practical and effective nature of Human Rights has implications for the public sector duty of the ETBs to eliminate discrimination and protect Human Rights, under Section 42 of the Irish Human Rights and Equality Commission Act 2014.

Article 2 of Protocol 1 of the European Convention is always examined by the European Court in conjunction with Articles 8 (the Right to Respect for Private and Family Life), Article 9 (Freedom of Thought, Conscience and Religion) and Article 10 (Freedom of Expression). Article 14 (Freedom from Discrimination) must also be taken into account (see page 20 of this document).

The former United Nations Special Rapporteur Heiner Bielefeld stated that: ²

"For instance, particularistic identity politics pervading international human rights rhetoric may undermine the status of all human beings as right holders; the amalgamation of freedom of religion or belief with political projects of 'interreligious harmony' may marginalise the human rights of dissenters, critics or other people who might disturb a superficial harmony; and the specific features of non-discrimination can get lost out of sight when mixed with vague concepts of general humanitarian values."

Article 9 is of particular significance given the subject under discussion. There are Positive and Negative aspects of Article 9 which are recognised by the European Court and the United Nations and which have implications under Article 2 of Protocol 1.

In the Grzelak v Poland case in 2010 the European Court stated that: ³

"85. Further, the Court reiterates that freedom of thought, conscience and religion, as enshrined in Article 9, is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital

elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, inter alia, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see Kokkinakis v. Greece, 25 May 1993, § 31, Series A no. 260-A, and Buscarini and Others v. San Marino [GC], no. 24645/94, § 34, ECHR 1999-I).

86. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom of thought, conscience and religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see Kokkinakis, cited above, § 33). The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see Leyla Şahin v. Turkey [GC], no. 44774/98, § 107, ECHR 2005-XI)."

In Hasan and Eylem Zengim v Turkey 2007 Para.47, the European Court has stated: ⁴

"General Principles

47. As regards the general interpretation of Article 2 of Protocol No. 1, the Court has set out the main principles in its case-law (see, in particular, Kjeldsen, Busk Madsen and Pedersen v. Denmark, judgment of 7 December 1976, Series A no. 23, pp. 2428, §§ 5054; Campbell and Cosans v. the United Kingdom, judgment of 25 February 1982, Series A no. 48, pp. 1618, §§ 3637; Valsamis v. Greece, judgment of 18 December 1996, Reports of Judgments and Decisions 1996VI, pp. 23232324, §§ 2528; and, most recently, Folgerø and Others v. Norway [GC], no. 15472/02, § 84, 29 June 2007). The two sentences of Article 2 of Protocol No. 1 must be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention (see Kjeldsen, Busk Madsen and Pedersen, cited above, § 52)."

Our education system is heavily influenced by the Catholic Church and especially in the area of teacher training. Regardless of the Patron body, all teachers and many policy makers have come through teacher training colleges where Human Rights are not given consideration. Various bodies quote Constitutional and Human Rights in general, all the time, in support of their position, while not giving any detail. In this follow-up document we intend to give detailed backup to our position.

One of the purposes of Article 44.2.4 (the opt out clause) of the Irish Constitution was to protect minorities in the education system.

When examining Article 44.2.4 the Constitutional Review Group in their Report in 1995 stated that: ⁵

"These and similar problems have been avoided to date largely by ad hoc and pragmatic responses to particular situations. But with an increasingly diverse and rights-conscious society, these problems cannot be ignored. Many of these difficulties are attributable to the fact that, unlike other countries, there is not a parallel system of non-denominational schools organised by the State which would cater for the interests of minorities in the examples already described. If such a system were in place, one major objection to any amendment of Article 44.2.4° would be removed and the way would be clear for State funding of denominational education per se (that is, integrated curriculum, preference for the admission of co-religionists etc). It would, however, be unrealistic to expect the State to provide such a system and, indeed, it could be wasteful of scarce resources were this to be done.

The present situation, therefore, presents a potential conflict of rights to which there is no satisfactory answer. The conflict lies between the right of the child (exercised through its parents) not to be coerced to attend religious instruction at a publicly funded school and the right of denominational schools in receipt of such public funding to provide for the fullness of denominational education through the medium of an integrated curriculum and other measures designed to preserve the religious ethos of a particular school. The provisions of Article 42.3.1° must also be borne in mind:

The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

The Review Group does not favour the amendment of this part of Article 44.2.4° for the following reasons:

i) Article 44.2.4° may be thought to represent something of an exception to the general rule contained in Article 44.2.3° that the State shall not endow any religion. Accordingly, if a school under the control of a religious denomination accepts State funding, it must be prepared to accept that this aid is not given unconditionally. Requirements that the school must be prepared in principle to accept pupils from denominations other than its own and to have separate secular and religious instruction are not unreasonable or unfair.

ii) if Article 44.2.4° did not provide these safeguards, the State might well be in breach of its international obligations, inasmuch as it might mean that a significant number of children of minority religions (or those with no religion) might be coerced by force of circumstances to attend a school which did not cater for their particular religious views or their conscientious objections. If this were to occur, it would also mean that the State would be in breach of its obligations under Article 42.3.1°

iii) this aspect of Article 44.2.4° reflects an earlier commitment given on behalf of the State contained in the Treaty of 1921 and Article 8 of the 1922 Constitution which was designed to safeguard the rights of religious minorities. Any amendment at this stage would be a retrograde step – especially in the context of Northern Ireland – and would send the wrong signal concerning pluralism in this State.”

Article 44.2.4 is meant to protect the Rights of minorities. It is not up to any Minister for Education, the NCCA, or the ETBs to decide for parents what is and what is not against their Conscience. It is reasonable for atheist and other parents who seek secular education for their children to view the GMGY Course and the NCCA courses as breaching their Conscience. Constitutional and Human Rights law supports this position.

Section 30 – 2 (e) of the Education Act 1998 (the opt out) refers to the ‘Conscience’ of parents. Article 42.3.1 of the Constitution, which the Constitutional Review Group referred to, says:

“The State shall not oblige parents in violation of their Conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.”

ETB schools are supposed to be the alternative to denominational schools. They are presented as such. Given the public sector duty of the ETBs under the IHREC Act it is reasonable and fair for us to expect the ETBs to recognise, Respect and cater for our conscientious objections and to hold them publicly accountable for their failure to do so.

In the High Court case in 1996, Campaign to Separate Church and State v Minister for Education, Justice Costello cited the Rights guaranteed to parents under the European Convention and the United Nations. He said that the Constitution had developed the significance of these parental Rights and has imposed an obligation on the State in relation to them.

“The parties to the First protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that States when assuming functions in relation to education “shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions (Article 2). The Irish Constitution has developed the significance of these parental Rights and in addition has imposed obligations on the State in relation to them.”

It seems to us that Constitutional and Human Rights law is used to support the Rights of religious parents in ETB schools, but when it comes to recognising and protecting the Constitutional and Human Rights of non religious parents and their children, the ETBs fail.

The State and the ETBs’ position is that the NCCA Religious Education course is Religious Education not Religious Instruction (under the Constitution and Deeds of Trust etc), and is suitable for atheists and secularists. This position is simply an example of the disrespect that the State and the ETBs have for our Philosophical Convictions.

The Irish version of the Constitution takes precedence over the English version. The Irish version of 44.2.4 says:

“Reachtáíocht lena gcuirtear cúnamh stáit ar fáil do scoileanna ní cead idirdhealú a dhéanamh inti idir scoileanna atá faoi bhainistí aicmí creidimh seachas a chéile ná í do dhéanamh dochair do cheart aon linbh chun scoil a gheibheann airgead poiblí a fhreastal gan teagasc creidimh sa scoil sin a fhreastal.”

“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 Irish version translates directly to not attending “religious teaching”, not instruction. Parents have a Right to opt their children out of any religious teaching. In addition, under 44.2.4, not attending any religious teachings should not prejudicially affect their Rights.

All subjects under the Education Act 1998 are referred to as ‘Instruction’. It can be Maths Instruction, English Instruction or Religious Instruction.

This analysis is reflected in the Irish Human Rights and Equality Commission Report in 2011 (Religion and Education; A Human Rights perspective, page 73 para 228): ⁶

“This analysis creates a distinction between “religious and moral formation” which is a broad and all encompassing concept, on the one hand, and “instruction” on the other which is a much narrower formulation. It will be recalled that it is “instruction” in a subject that forms the basis of exemptions under the Education Act, and appears to be limited to formal classes in any subject, including religion. This statement could be interpreted to endorse a form of integrated curriculum, however it arguably does not actually go that far, as the decision was made in the context of second-level education, whereas the integrated curriculum applies to primary schools.”

This analysis is also reflected by Dr Conor O'Mahony in a detailed article on the Right to opt out in relation to the incident in Castletroy Community College in 2015. An ETB school had refused to let a student opt out of the NCCA Religious Education course. Dr O'Mahony stated that: ⁷

“Castletroy College initially sought to resist the request to opt-out on the basis that the subject being provided was multi-denominational rather than doctrinal instruction. Nonetheless, the view taken by the Supreme Court in the passage quoted above suggests that this distinction is irrelevant. The right to opt-out applies to the formal timetabled period of “religious instruction”, and would seem to capture whatever form that instruction might take. Thus, while the distinction between “religious instruction” and the overall school ethos or “religious education” is often pointed to as undermining the right to opt-out in a primary school context, it might ironically serve to strengthen it in a secondary school setting.”

In the Council of Europe's Report of the Commission on the Kjeldsen, Busk Madsen and Pedersen v Denmark in 1975, it states that: ⁸

“148. First, the English term "education" corresponds to two terms "instruction" and "éducation" in the French text, but no essential difference appears. Instruction on sex, pregnancy, birth and venereal disease, whether in physical or biological terms, or in terms of human love and responsibilities, is, in the Commission's view, "education" in the sense of Art. 2 ; and indeed the applications would have been inadmissible under that Article were it not so.”

The ETBs' position on Religious Instruction and worship and Religious Education are not in harmony with the Supreme Court, the Constitutional Review Group, the Irish Human Rights and Equality Commission, or the European Court. Nor do the ETBs reflect the very purpose of the Constitution, which is to Respect the Rights of parents on the grounds of Conscience.

Given the judgements in the Campaign Case it does not make any sense to claim that Religious Education is less than Religious Instruction, and that Religious Education is suitable for all religions and none. Religious Education comes under Article 42.1 of the Constitution as well as Article 42.4. In the Campaign case Religious Education reflected the religious ethos of Community and Comprehensive schools that promoted moral and Religious Formation in order to help parents with the Religious Education of their children. Chaplains in these schools are paid on that basis (€9.8 Million).

We now have a State Religious Education course (the NCCA 2019 version), that seeks 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 is developing values through Religious Education which assists religious parents with the Religious Education of their children.

While schools are helping religious parents with the Religious Education of their children (the Positive aspect of Freedom of Thought, Conscience and Religion), the Right to opt out (the Negative aspect of Freedom of Thought, Conscience and Religion) is given no practical application, and the Positive obligation of the State under Article 42.3.2 to ensure ALL children get a basic moral education is ignored.

Article 42.3.2 States that:

“The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.”

The Department of Education's website states that:

“Education about Religions and Beliefs (ERB) and Ethics

The Forum acknowledged that the State has a responsibility to ensure that all children have the right to receive Education about Religions and Beliefs (ERB) and Ethics. The National Council for Curriculum and Assessment (NCCA) was given the task of developing such a curriculum. In November 2015, the NCCA launched a consultation process on proposals for a curriculum in Education about Religions and Beliefs (ERB) and Ethics. The consultation will run until the end of March 2016 and the NCCA aims to engage with as many stakeholders as possible to ensure balance in the development of a curriculum for ERB and Ethics.”

As you are aware the proposed new curriculum course on ERB and Ethics never happened. We appreciate that this was in relation to primary schools, but the principle still applies. Various bodies including the ETBI and also the Minister for Education claim that the NCCA Religious Education course and the GMGY course are suitable for all religions and none.

Given that our understanding of Religious Instruction, Religious Education, Respect and Indoctrination are at odds with those of the ETBs, you should appreciate why we see the ETBs as part of an education system that breaches our Constitutional and Human Rights.

If the main aim of a curriculum course was to contribute to the moral and spiritual development of all students through atheism, and to teach children about the relevance of atheism to their lives, then we would never hear the end of it. It would be seen as not Respecting religious parents' convictions and Indoctrinating their children into atheism.

On the other hand when it is promoting morals through religion, and teaching children the relevance of religion to their lives, it is somehow seen as Respect, inclusion, diversity and pluralism.

The curriculum also refers to “the Divine” as if it was an uncontested fact that such a thing exists. If the course was suitable for everybody, that would be a reference to “people who believe in the Divine” and what they think, not to an unspecified thing called “the Divine” that atheist parents do not believe in.

Finally, it is likely that the current situation is better or worse in different schools, depending on the approach of the particular Patron body, board of management, Principal, and teachers. But this is not a good enough response to breaches of Human Rights. We need a system where parents, children, and teachers can rely on the law protecting their Rights equally in any school, rather than being dependent on the attitudes and personalities of different individual people in the system.

We appreciate that the ETBI has no power to compel the ETBs to Respect our Human Rights. We understand fully that the ETBI cannot change the education system. However your Overarching Statement seems to have managed to get the ETBs to not implement the Circular Letters issued by the Department of Education in 2018 when they are legally obliged to implement them (S.15.2(a)).

2. The Right to Respect

Under the Constitution and Human Rights law the State is obliged to Respect the Right of parents to ensure that the education of their children is in accordance with their convictions.

The definition of the 'Right to Respect' for parents convictions is a General Principle of the European Court. Every case at the European Court in relation to Article 2 of Protocol 1 (the Right to Education) cites General Principles. Those General Principles come from case law at the Court.

The Irish Constitution uses the word 'inalienable Right' in Article 42.1 in relation to Respecting the Rights of parents. The word 'inalienable' is not used anywhere else in the Constitution.

The European Court has stated in *Kjeldsen, Busk Madsen and Pedersen v Denmark* 1976, para 50: ⁹

"Furthermore, the second sentence of Article 2 (P1-2) must be read together with the first which enshrines the right of everyone to education. It is on to this fundamental right that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second between State and private teaching.

This is the definition of Respect under the General Principles of the European Court of Human Rights.

In the *Folgero v Norway* case 2007, Para 84, the European Court stated that: ¹⁰

"Article 2 of Protocol 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the state to respect parents' convictions, be they religious or philosophical throughout the entire State education programme. That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the "functions" of the State. The verb "respect" means more than "acknowledge" or "take into account". In addition to a primarily negative undertaking it implies some positive obligation on behalf of the State. The term "conviction", taken on its own, is not synonymous with the words "opinions" and "ideas". It denotes views that attain a certain level of cogency, seriousness, cohesion and importance."

"The second sentence of Article 2 of Protocol No.1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious or philosophical conviction. That is the limit that must not be exceeded."

The *Folgero* case is very detailed in relation to religion and this is why we are using this case in particular. There are other cases that are relevant and we will also refer to them and give links to Hudoc which is the Council of Europe's database.

In their Report on Religion and Education; A Human Rights Perspective the Irish Human Rights & Equality Commission stated that:

“Information and Knowledge to be Conveyed in an Objective, Critical and Pluralistic Manner

255. This is a key phrase throughout the Court’s case law. Its purpose is to enable pupils to develop a critical mind with regard to religion. In its 2007 Judgement Folgero v Norway the European Court considered the right to education in relation to the curriculum of religious education (KRL) provided in schools in Norway. The particular curriculum adopted imparted knowledge of a wide range of religions but placed emphasis on the Lutheran religion which was the most common religion in the State, and also included an element of instruction in religious practice, over and above mere knowledge.

Although parents were entitled to withdraw their children from any part of the curriculum that was contrary to their own conscience and convictions, the system of exemption was very onerous and complicated and involved the parents giving the school information about their personal religious and philosophical convictions, to justify seeking an exemption. The European Court noted the place occupied by Christianity in the history and tradition of Norway and that the planning and setting of the curriculum came within the State’s “margin of appreciation”.

However the discretion afforded to the State had failed to take “sufficient care that the information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purpose of Article 2 of Protocol 1” and accordingly the refusal to “grant the applicant parents full exemption from the (Christianity, Religion and Philosophy subject) KRL subject for their children gave rise to a violation of Article 2 of Protocol No. 1.”

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 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.”

The following are some of the measures taken by the Norwegian State to implement the European Court’s judgement. This is from the COE Hudoc database: ¹¹

*“2) Developments following the European Court’s judgment:
New amendments to the 1998 Education Act entered into force on 01/08/2008 with effect from the school year 2008/2009.*

a) As regards the content of the classes, the amendments aim to further respond to the European Court’s concerns regarding the qualitative differences that applied to the teaching of Christianity as compared to that of other religions and philosophies. For this purpose the name of the subject has been altered to Religion, Philosophies of Life and Ethics (RE), and it is specified that it must be presented in an objective, critical and pluralistic manner, in accordance with human rights.

A new clause defining the object of the classes was adopted by Parliament in December 2008. It is the authorities’ opinion that the new clause no longer gives undue preference to the Christian faith. Christianity is mentioned as one, but not the only source, on which the fundamental values of education must be founded.

The Curriculum has been adapted to the new legislative amendments. It emphasises that religions and philosophies of life are to be presented in an objective, critical and pluralistic manner and that working methods which may be regarded as being related to religious practice should not be part of the Curriculum. A circular letter of August 2008 gave all schools information about the amendments and instructed them to take immediate measures to implement the new Curriculum for the subject Religion, Philosophies of Life and Ethics.

b) As regards the partial exemption scheme, a new paragraph was added to the provision on partial exemption stressing that schools shall respect the religious and philosophical convictions of pupils and their parents and ensure the right to equivalent education. The government submitted that schools are obliged to give parents more information about the content of lessons. In addition, any new dispute on the application of the exemption clause in the new regulatory environment may be brought before the Norwegian courts which accept the direct effect of the judgments of the European Court and will thus consider the matter with a view to preventing any new violation of the Convention.”

Secularism is a Philosophical Conviction

In the *Lautsi v Italy* 2011 case at the European Court the Court stated that: ¹²

*“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.*).”*

The European Court views secularism as a philosophical conviction. Here in Ireland the State and the ETBs disrespect the Rights of parents who seek secular education for their children by contributing to their moral and spiritual education through religion, teaching their children to Respect beliefs, teaching them the relevance of religion to their lives, and behaving as if this is in accordance with Human Rights and pluralism.

In balancing the Rights of the various religions and beliefs of the school community the European Court has found in the *Campbell & Cosans v UK* case 1976 that:

*“(a) whilst the adoption of the policy referred to clearly foreshadows a move in the direction of the position taken by the applicants, it does not amount to “respect” for their convictions. As is confirmed by the fact that, in the course of drafting of Article 2 (P1-2), the words “have regard to” were replaced by the word “respect” (see documents CDH (67) 2, p. 163) the latter word means more than “acknowledge” or “taken into account”, in addition to a primarily negative undertaking, it implies some positive obligation on the part of the state (see *mutatis mutandis*, the *Marckx* judgement of 13 June 1979, series A no. 31, p. 15 par. 31). This being so, the duty to respect parental convictions in this sphere cannot be overridden by the alleged necessity of striking a balance between the conflicting views involved, nor is the Government’s policy to move gradually towards the abolition of corporal punishment in itself sufficient to comply with this duty.”*

The Right to Respect for parents' convictions is an absolute Right and not one that can be balanced against the Rights of others.

The United Nations on the Right to Respect

The United Nations also examined the case of Humanists in Norway and the failure of the Norwegian State to Respect their convictions. There is no difference between the United Nations and the European Court in relation to these issues. There is just sometimes a difference in emphasis.

In *Leirvag v Norway* 2004, the United Nations stated: ¹³

“14.5 The Committee notes that the existing normative framework related to the teaching of the CKREE subject contains internal tensions or even contradictions. On the one hand, the Constitution and the object clause in the Education Act contain a clear preference for Christianity as compared to the role of other religions and worldviews in the educational system. On the other hand, the specific clause on exemptions in Section 2-4 of the Education Act is formulated in a way that in theory appears to give a full right of exemption from any part of the CKREE subject that individual pupils or parents perceive as being the practice of another religion or adherence to another philosophy of life. If this clause could be implemented in a way that addresses the preference reflected in the Constitution and the object clause of the Education Act, this could arguably be considered as complying with article 18 of the Covenant.

14.6 The Committee considers, however, that even in the abstract, the present system of partial exemption imposes a considerable burden on persons in the position of the authors, insofar as it requires them to acquaint themselves with those aspects of the subject which are clearly of a religious nature, as well as with other aspects, with a view to determining which of the other aspects they may feel a need to seek – and justify – exemption from. Nor would it be implausible to expect that such persons would be deterred from exercising that right, insofar as a regime of partial exemption could create problems for children which are different from those that may be present in a total exemption scheme. Indeed as the experience of the authors demonstrates, the system of exemptions does not currently protect the liberty of parents to ensure that the religious and moral education of their children is in conformity with their own convictions. In this respect, the Committee notes that the CKREE subject combines education on religious knowledge with practising a particular religious belief, e.g. learning by heart of prayers, singing religious hymns or attendance at religious services (para 9.18). While it is true that in these cases parents may claim exemption from these activities by ticking a box on a form, the CKREE scheme does not ensure that education of religious knowledge and religious practice are separated in a way that makes the exemption scheme practicable.

14.7 In the Committee's view, the difficulties encountered by the authors, in particular the fact that Maria Jansen and Pia Suzanne Orning had to recite religious texts in the context of a Christmas celebration although they were enrolled in the exemption scheme, as well as the loyalty conflicts experienced by the children, amply illustrate these difficulties. Furthermore, the requirement to give reasons for exempting children from lessons focusing on imparting religious knowledge and the absence of clear indications as to what kind of reasons would be accepted creates a further obstacle for parents who seek to ensure that their children are not exposed to certain religious ideas. In the Committee's view, the present framework of CKREE, including the current

regime of exemptions, as it has been implemented in respect of the authors, constitutes a violation of article 18, paragraph 4, of the Covenant in their respect.”

The United Nations, in its document International Standards 13G on the Right of parents to ensure the religious and Moral Education of their children, has stated that: ¹⁴

“49. In many countries Religious Instruction in the above defined sense constitutes an integral part of public school teaching and maybe even of the mandatory school curriculum. Such practice may reflect the interests and demands of large parts of the population. Many parents may wish that their children be familiarised with the basic doctrines and rules of their own religion or belief and that the school take an active role in that endeavour. In the understanding of many parents, the development of knowledge and social skills of their children through school education would be incomplete unless it includes a sense of religious awareness and familiarity with their own religion or belief. Hence the provision of Religious Instruction in the public school system may be based on the explicit or implicit wishes of considerable currents within the country’s population.

50. However, given the ambivalence of the school situation – including possible situations of particular vulnerability for some persons or groups – Religious Instruction in the public school system must always go hand in hand with specific safeguards on behalf of members of religious or belief minorities. The Human Rights Committee has also emphasised that instruction in a religious context should “respect the convictions of parents and guardians who do not believe in any religion” [See Human Rights Committee, communications No. 40/1978, Hartikainen v. Finland, Views adopted on 9 April 1981, para. 10.4, and Leirvåg v. Norway, para. 14.2.].

A minimum requirement would be that members of minorities have the possibility of “opting out” of a Religious Instruction that goes against their own convictions. Such exemptions should also be available for persons adhering to the very same faith on which instruction is given, whenever they feel that their personal convictions – including maybe dissenting convictions – are not respected. Moreover, the possibility of opting out should not be linked to onerous bureaucratic procedures and must never carry with it de jure or de facto penalties. Finally, wherever possible, students not participating in Religious Instruction due to their different faith should have access to alternative courses provided by the school.

51. The decision whether or not to opt out of Religious Instruction must be left to students or their parents or guardians who are the decisive rights holders in that respect. With regard to article 18, paragraph 4, of the International Covenant on Civil and Political Rights, the Human Rights Committee has noted that “public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians”. [Human Rights Committee, general comment No. 22, para. 6. See also Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 28.]

Moreover, attention must be given to the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child. [Art. 14, para. 2, of the Convention on the Rights of the Child.] The concept of “evolving capacities” is crucial since it acknowledges that the child at some point “comes of age” and should be able to make personal choices in matters of religion or belief. Due weight should be given to the views of the child in

accordance with his or her age and maturity, which need to be assessed on a case-by-case basis. [See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 29. With regard to the concept of “evolving capacities” in the context of the child’s right to freedom of religion or belief see A/64/159, paras. 26-28.]

52. Unfortunately, however, reports from various countries indicate that the above mentioned principles – which constitute an integral part of freedom of religion or belief – are not always Respected. In some countries students belonging to minorities allegedly experience formal or informal pressure to attend Religious Instruction given on the sole basis of the country’s dominant religious tradition. The same can happen to adherents of alternative interpretation of, or dissenting views on, the dominant religion on which school instruction is based. Even worse, incidents have been reported that in some schools members of minorities or persons with dissenting views have to express criticism of their own conviction as a precondition to take their school examinations. Exemptions for students adhering to religions or beliefs other than those instructed in school, if available at all, are sometimes linked to onerous application procedures or stigmatising practices, with the result that students and parents often refrain from making use of them.

52. In this context, it is worth emphasising that practices which forcibly expose students to Religious Instruction against their own will violate article 18, paragraph 2, of the International Covenant on Civil and Political Rights which states that “no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.”

Some history on the obligation of the State to Respect parents’ convictions

We want to give you some history of the European Court’s General Principle on ‘Respect’ as this may help to give a better understanding.

One of the first cases at the European Court in relation to defining Respect for Parents’ Convictions was a case about corporal punishment in the UK, (Cambell & Cosans v UK 1976).

It is also one of the cases that recognised and defined that Article 2 of Protocol 1 (the Right to Education) obliges states to protect parents’ Philosophical Convictions in addition to parents’ Religious Convictions. Article 2 of Protocol 1 refers specifically to Religious and Philosophical Convictions. In the Irish education system Philosophical Convictions are never given the same protection and Respect that Religious Convictions are given.

In Cambell & Cosans v UK – 25 February 1982, the European Court stated that: ¹⁵

“35. Thirdly, in the submission of the Government, the obligation to respect philosophical convictions arises only in the relation to the content of, and mode of conveying, information and knowledge and not in relation to all aspects of school administration.

As the Government pointed out, the Kjeldsen, Busk Madsen and Pedersen judgment states (p. 26, par. 53):

"The second sentence of Article 2 (P1-2) implies ... that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective,

critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded."

However, that case concerned the content of instruction, whereas the second sentence of Article 2 (P1-2) has a broader scope, as is shown by the generality of its wording. This was confirmed by the Court in the same judgment when it held that the said sentence is binding upon the Contracting States in the exercise, inter alia, of the function "consisting of the organisation and financing of public education" (p. 24, par. 50). And in the present case the functions assumed by the respondent State in this area extend to the supervision of the Scottish educational system in general, which must include questions of discipline (see paragraph 34 above).

36. The Government also contested the conclusion of the majority of the Commission that the applicants' views on the use of corporal punishment amounted to "philosophical convictions", arguing, inter alia, that the expression did not extend to opinions on internal school administration, such as discipline, and that, if the majority were correct, there was no reason why objections to other methods of discipline, or simply to discipline in general, should not also amount to "philosophical convictions".

In its ordinary meaning the word "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas", such as are utilised in Article 10 (art. 10) of the Convention, which guarantees freedom of expression; it is more akin to the term "beliefs" (in the French text: "convictions") appearing in Article 9 (art. 9) - which guarantees freedom of thought, conscience and religion - and denotes views that attain a certain level of cogency, seriousness, cohesion and importance.

As regards the adjective "philosophical", it is not capable of exhaustive definition and little assistance as to its precise significance is to be gleaned from the travaux préparatoires. The Commission pointed out that the word "philosophy" bears numerous meanings: it is used to allude to a fully-fledged system of thought or, rather loosely, to views on more or less trivial matters. The Courts agrees with the Commission that neither of these two extremes can be adopted for the purposes of interpreting Article 2 (P1-2): the former would too narrowly restrict the scope of a right that is guaranteed to all parents and the latter might result in the inclusion of matters of insufficient weight or substance.

Having regard to the Convention as a whole, including Article 17 (art. 17), the expression "philosophical convictions" in the present context denotes, in the Court's opinion, such convictions as are worthy of respect in a "democratic society" (see, most recently, the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 25, par. 63) and are not incompatible with human dignity; in addition, they must not conflict with the fundamental right of the child to education, the whole of Article 2 (P1-2) being dominated by its first sentence (see the above-mentioned Kjeldsen, Busk Madsen and Pedersen judgment, pp. 25-26, par. 52). The applicants' views relate to a weighty and substantial aspect of human life and behaviour, namely the integrity of the person, the propriety or otherwise of the infliction of corporal punishment and the exclusion of the distress which the risk of such punishment entails. They are views which satisfy each of the various criteria listed above; it is this that distinguishes them from opinions that might be held on other methods of discipline or on discipline in general.

37. *The Government pleaded, in the alternative, that the obligation to respect the applicants' convictions had been satisfied by the adoption of a policy of gradually eliminating corporal chastisement.*"

The term 'Philosophical Conviction' under Article 2 of Protocol 1 could also refer to Veganism or Environmentalism, and they also have implications for schools in Ireland. There have been no cases at the European Court, but it is difficult to see why they would not be protected and require the State to ensure Respect for parents' convictions. Requiring children from families who are Vegan to celebrate and Respect ceremonies such as Eid Al-Adha is pursuing an aim of Indoctrination by not Respecting vegan parents' convictions.

In the Council of Europe Handbook on Freedom of Thought, Conscience and Religion it states:

What is meant by "thought, conscience and religion"?

Use of the terms "thought, conscience and religion" (and "religion or beliefs" in paragraph 2) suggests a potentially wide scope for Article 9, but the case-law indicates a somewhat narrower approach is adopted in practice. For example, a "consciousness" of belonging to a minority group (and in consequence, the aim of seeking to protect a group's cultural identity) does not give rise to an Article 9 issue. Nor is "belief" the same as "opinion", for to fall within the scope of Article 9, personal beliefs must satisfy two tests: first, the belief must "attain a certain level of cogency, seriousness, cohesion and importance"; and secondly, the belief itself must be one which may be considered as compatible with respect for human dignity.

In other words, the belief must relate to a "weighty and substantial aspect of human life and behaviour" and also be such as to be deemed worthy of protection in European democratic society.³⁷ Beliefs in assisted suicide³⁸ or language preferences³⁹ or disposal of human remains after death⁴⁰ do not involve "beliefs" within the meaning of the provision. On the other hand, pacifism,⁴¹ atheism⁴² and veganism⁴³ are value systems clearly encompassed by Article 9. A political ideology such as communism will also qualify.⁴⁴ However, it is important to note that interferences with the voicing of thoughts or the expression of conscience will often be treated as giving rise to issues arising within the scope of Article 10's guarantee of freedom of expression or the right of association under Article 11."

Negative and Positive aspects of Freedom of Religion and the Right to Education.

There are Negative and Positive aspects of Freedom of Thought, Conscience and Religion under Article 9 of the European Convention. The Council of Europe Handbook on Article 9 outlines the Positive and Negative aspects of this Right. You can find the Handbook here. ¹⁶

Article 9 of the European Convention is examined by the European Court in conjunction with Article 2 of Protocol 1 and particularly in relation to areas such as Respecting parents' religious and philosophical conviction. This is one of the General Principles of the European Court as outlined in the Folgero case. ¹⁷

"(c) Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (see Kjeldsen, Busk Madsen and Pedersen, cited above, § 51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the "functions" assumed by the State. The verb "respect" means more than "acknowledge" or "take into account". In

addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see Valsamis, cited above, §§ 25 and 27, and Campbell and Cosans, cited above, §§ 36-37).”

The Right to Respect parents’ convictions under Article 2 of Protocol 1 is a primarily Negative undertaking.

However, the Supreme Court in the Campaign case has said that the State could help parents with the Religious Education of their children by funding Chaplains and this was recognised by Article 42.1 and 42.4. That is a Positive obligation under the Constitution.

The State also has a Positive obligation to ensure all children get a basic moral education under Article 42.3.2.

Under Human Rights law there is no obligation on any State to allow Religious Education in public schools, (the Positive side of Article 9 and Article 2 of Protocol 1). The European Court has said that: ¹⁸

“135. Furthermore, the right to manifest religion in “teaching” does not go so far as to entail an obligation on States to allow religious education in public schools (Savez crkava « Riječ života » and Others v. Croatia, § 57). Nevertheless, if the State decides to grant this kind of privilege to certain religious communities, the special rights and privileges fall within the scope of Article 9, such that the prohibition of discrimination enshrined in Article 14 of the Convention becomes applicable (Savez crkava « Riječ života » and Others v. Croatia, § 58).”

The Former United Nations Rapporteur on Freedom of Religion and Belief, Heiner Bielefeld, has said that: ¹⁹

“Taking freedom seriously necessarily implies equal concern for what has been called ‘positive’ freedom and ‘negative’ freedom. These are two sides of one and the same coin. No one can be free to do something unless he or she is also free not to do it, and vice versa. That is why freedom of religion or belief also covers the ‘negative’ dimensions, for example, the freedom not to profess a religion or belief, not to attend worship or just not to care about religious or philosophical issues, etc. There is no hierarchy between positive and negative freedom. Indeed, any attempt to establish such a hierarchy would finally obscure the liberating essence of freedom of religion or belief in general.”

Parents and their children have a Right to simply not care about religious or philosophical issues. Coercing such parents and students into taking classes in religion and/or philosophical issues because the State believes it is good for them is an ideological position that undermines the Negative aspect of their Right to Freedom of Religion and Belief.

Part of the Negative aspect of the Right to Freedom of thought, Conscience and Religion under the European Convention is the Right of individuals not to reveal their faith or that they are non-believers, and also to be able to opt out without discrimination.

In the Grzelak v Poland case in 2010 the European Court stated that: ²⁰

“87. The Court reiterates that freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their

faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs (see, Alexandridis v. Greece, no. 19516/06, § 38, ECHR 2008-..., and, mutatis mutandis, Hasan and Eylem Zengin v. Turkey, no. 1448/04, § 76 in fine, ECHR 2007-XI). The Court has accepted, as noted above, that Article 9 is also a precious asset for non-believers like the third applicant in the present case. It necessarily follows that there will be an interference with the Negative aspect of this provision when the State brings about a situation in which individuals are obliged – directly or indirectly – to reveal that they are non-believers. This is all the more important when such obligation occurs in the context of the provision of an important public service such as education.”

The Negative aspects of the Right to Freedom of Thought, Conscience and Religion also has consequences for differentiated teaching within a class.

In the Folgero v Norway case 290607 the European Court stated that: ²¹

99. Thirdly, the Court observes that even in the event that a parental note requesting partial exemption was deemed reasonable, this did not necessarily mean that the pupil concerned would be exempted from the part of the curriculum in question. Section 2-4 provided that “the school shall as far as possible seek to find solutions by facilitating differentiated teaching within the school curriculum”. A detailed outline with examples of how differentiated teaching was to be implemented may be found in Circular F03-98, from which it can be seen that the teacher was to apply, in cooperation with the parents, a flexible approach, having regard to the parents’ religious or philosophical affiliation and to the kind of activity in issue. The Court notes in particular that for a number of activities, for instance prayers, the singing of hymns, church services and school plays, it was proposed that observation by attendance could suitably replace involvement through participation, the basic idea being that, with a view to preserving the interest of transmitting knowledge in accordance with the curriculum, the exemption should relate to the activity as such, not to the knowledge to be transmitted through the activity concerned (see paragraph 48 above). However, in the Court’s view, this distinction between activity and knowledge must not only have been complicated to operate in practice but also seems likely to have substantially diminished the effectiveness of the right to a partial exemption as such. Besides, on a purely practical level, parents might have misapprehensions about asking teachers to take on the extra burden of differentiated teaching (see paragraph 29 above).

100. In the light of the above, the Court finds that the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a religious character, the scope of a partial exemption might even be substantially reduced by differentiated teaching. This could hardly be considered consonant with the parents’ right to respect for their convictions for the purposes of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 of the Convention. In this respect, it must be remembered that the Convention is designed to “guarantee not rights that are theoretical or illusory but rights that are practical and effective” (see Öcalan v. Turkey [GC], no. 46221/99, § 135, ECHR 2005IV).”

Some Additional cases on the Right to Education at the European Court

Here are some of the relevant cases at the European Court in relation to religious culture and ethics education.

These cases are interesting because the cases were about different interpretations of Islam. Turkey has a secular Constitution. The different variations of Islam were not Respected in a State course in Turkish schools.

The European Court found that it is necessary, in so far as possible, to avoid a situation where pupils face a conflict of allegiance between the Religious Education given by the school and the religious or Philosophical Convictions of their parents.

In *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, 9 October 2007, the European Court found that: ²²

“(b) As to whether appropriate means existed to ensure Respect for parents' convictions

71. The Court reiterates the Contracting Parties' positive obligation under the second sentence of Article 2 of Protocol No. 1, which gives parents the right to demand from the State respect for their religious and philosophical convictions in the teaching of religion (see Campbell and Cosans, cited above, § 37). Where a Contracting State includes religious instruction in the curriculum for study, it is then necessary, in so far as possible, to avoid a situation where pupils face a conflict between the religious education given by the school and the religious or philosophical convictions of their parents. In this connection, the Court notes that, with regard to religious instruction in Europe and in spite of the variety of teaching approaches, almost all of the member States offer at least one route by which pupils can opt out of religious education classes, by providing an exemption mechanism or the option of attending a lesson in a substitute subject, or making attendance at religious studies classes entirely optional (see paragraph 34 above).”

In the *Mansur Yalcin and Others Case 2014* at the European Court, the Court went further into detail about the fundamental conflicts within a religion that could not be bridged to an adequate extent solely by means of the information about another version of the belief being inserted into textbooks. This can also be looked at in relation to the fundamental differences between religion and atheism and the fact that the NCCA Religion course seeks to teach children about the relevance of religion to their lives.

The Court has stated: ²³

“75. The Court has difficulty discerning how it is possible to avoid a conflict between the religious instruction given by the pupils' school and the religious or philosophical convictions of their parents, in the absence of an appropriate system of exemption arising from the compulsory nature of the religious culture and ethics classes. As the Government pointed out, even persons who follow the same religion may have differing views as regards interpretation and practice. Admittedly, parents may always enlighten and advise their children, exercise with regard to their children natural parental functions as educators, or guide their children on a path in line with the parents' own religious or philosophical convictions (see Valsamis, cited above, § 31 in fine). Nevertheless, in the Court's view, the disparity complained of by the applicants between, on the one hand, the approach taken by the syllabus and, on the other hand, the particular features of their faith when compared with the Sunni understanding of Islam is such that it could not easily be bridged to an adequate extent solely by means of the information concerning Alevi beliefs and practice inserted in the textbooks. As to the Government's argument that more detailed information could be imparted to pupils in the context of the optional religion classes, the Court considers that this possibility does not exempt the State from its obligation to ensure that the teaching of such

compulsory subjects satisfies the criteria of objectivity and pluralism while Respecting religious or philosophical beliefs.”

“77. Consequently, notwithstanding the significant changes made in 2011/12 to the syllabus for religious culture and ethics and to the corresponding textbooks, it appears that the education system of the respondent State still does not provide appropriate means in order to ensure that parents’ convictions are respected. In particular, the Court notes that the Turkish education system offers no appropriate options for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam, and that the very limited procedure for exemption is likely to subject pupils’ parents to a heavy burden and to the necessity of disclosing their religious or philosophical convictions in order to have their children exempted from the lessons in religion. There has therefore been a violation of Article 2 of Protocol No. 1 in the present case.”

The Right to be free from Discrimination

Section 7 (2) (b) of the Equal Status Act states that:

“An educational establishment shall not discriminate in relation to... the access of a student to any course, facility or benefit provided by the establishment.”

In this regard the Irish Human Rights & Equality Commission in their Report Religion and Education; A Human Rights perspective stated that: ²⁴

“73. It may be noted that, other than in relation to admissions, schools are not permitted to discriminate against students on the religion ground in any other circumstances.”

In addition to the Equal Status Act, ETB schools have a public sector duty under Section 42 of the IHREC Act to eliminate discrimination and protect Human Rights.

Some Atheists and some parents seeking secular education for their children cannot access the GMGY course and the NCCA Religious Education course on the grounds of Conscience, because these courses do not Respect their Right to ensure that the teaching of their children is in conformity with their convictions.

The European Court has found that the Rights guaranteed under the European Convention must be guaranteed without discrimination.

In the Grzelak v Poland case in 2010 the European Court has stated that: ²⁵

“84. As the Court has consistently held, Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, Van Raalte v. the Netherlands, 21 February 1997, § 33, Reports of Judgments and Decisions 1997-I, and Camp and Bourimi v. the Netherlands, no. 28369/95, § 34, ECHR 2000-X).”

The European Court has found that Article 14 also applies to any additional Rights, falling within the wider ambit of any convention article, for which the State has voluntarily decided to provide.

ETB schools provide extra Rights for religious parents in order to help them with the Religious Education of their children.

- Funding teacher training to deliver Catholic or Protestant Religious Education.
- Funding the salary of teachers to deliver denominational religion courses.
- Funding the roll out and development of the GMGY course in Community National schools.
- Funding state exams and recognition of studies in the NCCA religion course at Junior and Leaving Certificate level.
- Funding the inspection and delivery of religion courses in schools.
- Funding Catholic Chaplains in ETB schools (9.8 Million).
- Funding denominational religion classes and worship in ETB schools
- Funding NCCA Religion class in ETB schools.
- Funding Religious retreats.
- Funding the Training of teachers to do retreats.
- Funding Catholic courses in ETB schools for students to evangelise other students and become faith leaders in their community.
- Funding Accord to deliver Catholic sex education classes in ETB schools.
- Funding Catholic Youth Ministry Services.

Atheists and other parents seeking secular education for their children get no such assistance. They find it difficult to opt out their children from religion and the schools claim that they have no resources to provide another subject, despite it being a Constitutional condition of receiving state aid for the school that they Respect the Right of a child to attend the school without attending Religious Instruction.

In the *Savez Crkava Rijec Zivota & Others v Croatia* Judgement at the European Court it states: ²⁶

*58. Nevertheless, the Court considers that celebration of a religious marriage, which amounts to observance of a religious rite, and teaching of a religion both represent manifestations of religion within the meaning of Article 9 § 1 of the Convention. It also notes that Croatia allows certain religious communities to provide religious education in public schools and nurseries and recognises religious marriages performed by them. The Court reiterates in this connection that the prohibition of discrimination enshrined in Article 14 of the Convention applies also to those additional rights, falling within the wider ambit of any Convention Article, for which the State has voluntarily decided to provide (see *E.B. v. France* [GC], no. 43546/02, § 48, ECHR 2008-...). Consequently, the State, which has gone beyond its obligations under Article 9 of the Convention in creating such rights cannot, in the application of those rights, take discriminatory measures within the meaning of Article 14 (see, *mutatis mutandis*, *E.B. v. France*, cited above, § 49). It follows that, although Croatia is not obliged under Article 9 of the Convention to allow Religious Education in public schools and nurseries or to recognise religious marriages, the facts of the instant case nevertheless fall within the wider ambit of that Article (see, for example and *mutatis mutandis*, *Thlimmenos v. Greece* [GC], no. 34369/97, §§ 40-43, ECHR 2000-IV; *Löffelmann v. Austria*, no. 42967/98, §§ 46-48, 12 March 2009; and *Gütl v. Austria*, no. 49686/99, §§ 31-33, 12 March 2009). Accordingly, Article 14 of the Convention, read in conjunction with Article 9, is applicable to the present case.*

59. It follows that the Government's objection to the applicability of Article 14 of the Convention must also be dismissed.

Article 42.3.2 of the Constitution states that:

“The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.”

In essence then there is an obligation on the State to provide children with a basic moral education. Article 42.3.2 of the Constitution does not require the State to provide children with a basic Religious Education. By contrast, Article 42.1 requires parents to provide for the Religious Education of their children. The Constitution deliberately distinguishes between the two concepts of religious and moral education, and who is responsible for each.

Atheist and other parents seeking secular education for their children enjoy neither the Positive or the Negative benefits of the Rights to Freedom of Thought, Conscience and Religion and Freedom from Discrimination.

With regard to the opt out and students left sitting in the class if they do manage to opt out of the Religious Education courses in ETBs, page 82 of the Forum on Patronage and Pluralism stated that:

“Eventually, following a further request at the Forum meeting on 17 November, exemplars of the practices in six schools were submitted to the Group. However, they vary greatly in the quality of the provision made, and in some cases the approach being taken is clearly unsatisfactory. One school’s submission read as follows:

The general practice for religion time is that the children of other faiths are present, sometimes engaging in an activity of their own and sometimes taking an active part in RE where conversation relates to non-religious elements. This seems to be a happy situation for teachers and also for the parents of the children of other faiths.

This perspective does not illustrate sufficient understanding of the human Rights issues involved.”

3. Respect is For People, Not Beliefs

In a recent Report to the United Nations Human Rights Council the United Nations Special Rapporteur on Freedom of Religion and Belief, Ahmed Shaheed stated that: ²⁷

“55. Freedom of religion or belief and freedom of expression are closely interrelated and mutually reinforcing rights when they are exercised in the legal framework established by international Human Rights law.

Both rights are fundamental to a democratic society and individual self-fulfilment and are foundational to the enjoyment of Human Rights. The Special Rapporteur asserts that the cases presented in the present report are illustrative of the fact that measures for addressing the challenges posed by expression involving religion or belief are open to abuse and can be counterproductive, oftentimes victimising adherents of myriad religions and beliefs in their application.

International law compels States to pursue a restrained approach in addressing tensions between freedom of expression and freedom of religion or belief. Such an approach must rely on criteria for limitations which recognise the rights of all persons to the freedoms of expression and manifestation of religion or belief, regardless of the critical nature of the opinion, idea, doctrine or belief or whether that expression shocks, offends or disturbs others, so long as it does not cross the threshold of advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.”

“16. According to these opponents of widening the scope of limitations, attempts to shield religious dogma from criticism do not represent a clash between Human Rights, but, rather, are indicative of the misapplication of Human Rights principles. Moreover, freedom of religion or belief does not bestow a right on believers to have their religion or belief itself protected from all adverse comment, but primarily confers on them a right to act peacefully in accordance with their beliefs (A/HRC/2/3, para. 37).

Manifestations of religion or belief, they note, must comply with the duty to respect the fundamental rights and freedoms of others and may be subject to limitations on those grounds. In that regard, States have an obligation to prohibit any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence (Covenant, art. 20 (2)).

Proponents of restrictions on the freedom of expression also argue that limits pose an inherent threat to the exercise of the right to freedom of religion or belief for all, since such restrictions regularly target minority religions or beliefs whose very existence may challenge the convictions of majority religious communities. This includes the beliefs of atheists and humanists that, by their very definition, constitute blasphemy in the eyes of various faith groups”.

The former United Nations Special Rapporteur on Freedom of Religion and Belief, Heiner Bielefeld, has stated: ²⁸

“Rights holders are human beings who may exercise these freedoms as individuals and in community with others. While this may sound like a truism in the context of Human Rights in general, the right to freedom of religion or belief has sometimes been misperceived as protecting religions or belief systems in themselves.

This misperception is the source of much confusion, as it obfuscates the nature of freedom of religion or belief as an empowering right. Ignoring that may lead to the wrong assumption of an antagonism between freedom of religion or belief and freedom of expression. Thus, it may warrant highlighting that freedom of religion or belief protects believers rather than religions or beliefs.”

In his Report to the United Nations Human Rights Council in 2017 Ahmed Shaheed, the United Nations Special Rapporteur on Freedom of Religion and Belief, stated that: ²⁹

23. For the purposes of the present report, however, the Special Rapporteur wishes to highlight some of the most common misconceptions that exist regarding his mandate and also what the right to freedom of religion or belief encompasses (and does not encompass).

24. Individuals, not religions, convictions, belief systems or truth claims, are the right-holders of the right to freedom of religion or belief. More specifically, this right is not designed to protect beliefs as such (religious or otherwise), but rather believers and their freedom to possess and express their beliefs either individually or in community with others in order to shape their lives in conformity with their own convictions (A/71/269, para.11).

From the Venice Commission – Guidelines for Review of legislation pertaining to Religion or Belief: ³⁰

77. It is also worth recalling that an insult to a principle or a dogma, or to a representative of a religion, does not necessarily amount to an insult to an individual who believes in that religion. The European Court of Human Rights has made clear that an attack on a representative of a church does not automatically discredit and disparage a sector of the population on account of their faith in the relevant religion³⁸ and that criticism of a doctrine does not necessarily contain attacks on religious beliefs as such. The difference between group libel and individual libel should be carefully taken into consideration.

The Council of Europe in their Factsheet on Freedom of expression and Respect for religious beliefs: Striking the right balance stated that: ³¹

“According to the European Court of Human Rights it must be possible, in a democratic society, to criticise religious ideas, even if such criticism may be perceived by some as hurtful to their religious feelings. Freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights covers not only information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that shock, offend or disturb. Religious groups must tolerate critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to incitement to religious hatred and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion.”

The former United Nations Special Rapporteur Heiner Bielefeld has stated that: ³²

“the amalgamation of freedom of religion or belief with political projects of ‘interreligious harmony’ may marginalise the Human Rights of dissenters, critics or other people who might disturb a superficial harmony; and the specific features of non-discrimination can get lost out of sight when mixed with vague concepts of general humanitarian values”.

He added:

“A source of much confusion is the term ‘identity’ that plays a major role in many current debates on human rights, minority issues and anti-discrimination policies. It is one of those keys terms one can in fact hardly avoid using. However, the problem may arise that an unspecified invocation of ‘identity’ in the context of freedom of religion or belief can obscure the component of ‘change’ or ‘choice’ that forms an integral and indispensable part of this human right.

Given the right to also change one's religion or to have and adopt a religion or belief of one's own choice, the notion of identity in the area of religion or belief conceptually differs from, say, identity in the area of ethnicity. When using the somewhat fashionable identity language, at least one has to insist that religious or belief-based identity is always an identity ‘in the making’, ie in the sense that it can change in most different ways and can also legitimately be exposed to missionary activities, including non-violent forms of provocation.

Saying this does not imply denying the possibility of serious changes also in other areas, like ethnicity. But still there remains a conceptual difference that in my opinion receives too little attention. To give just one example to illustrate the significance of that difference: While negative comments on some particular ethnic characteristics— an extreme case would be skin colour—for good reasons are generally condemned as unacceptable, negative remarks on religious ideas like, for instance, monotheism, divine revelation or re-incarnation, although possibly deemed offensive by the recipient groups, in my view clearly deserves a different assessment.

I would insist, at any rate, that there is a wider scope of legitimate intellectual provocation in the field of religion or belief than in the field of ethnicity—which has to do with the explicit recognition of the rights to change and to make choices in the field of religion or belief. Hence, if we simply lump together religion, belief, ethnicity, ‘race’ and other elements of a person's or a group's identity, with the purpose of protecting such identities, we run a serious risk of losing out of sight some crucial elements of freedom of religion or belief, including the freedom to search, choose, change, reach out, communicate, convert and peacefully provoke in the field of religious or belief.”

We do not bring up our children to Respect religious beliefs. We teach them to challenge them, and challenge them at every opportunity, especially those beliefs that undermine the dignity of the human person and consequently Human Rights.

Claiming that the GMGY Course and the NCCA Religious Education course is suitable for all religions and none undermines the Rights of parents and it also undermines Human Rights.

Finally, Article 44.1 of the Constitution states that:

“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 Article cannot be used to justify the State engaging in behaviours in the education system that do not Respect the Rights of atheist or other secular parents. The Constitution Review Group of 1995 said of this Article: ³³

“As already noted, the precise legal significance of the first sentence of Article 44.1 is obscure. Despite the statement to the contrary in the Quinn’s Supermarket case, the

terms of the acknowledgment (with its reference to 'Almighty God') would appear to confine its benefits to members of the Judaeo-Christian faiths, or, at the very least, members of monotheistic faiths.

If this first sentence of Article 44.1 were to be held to mean that the State was obliged through its representatives to engage in a form of open religious worship (even if the State did not discriminate between religious denominations), this would be regarded as objectionable by many. If, on the other hand, this sentence merely implies that the State is obliged to permit individuals to engage in public worship, this can be dealt with (if necessary) by a suitable amendment of Article 44.2.1° which would restate this principle in more direct language. (This is further considered at 2 below).

Similar considerations apply to the first lines of the second sentence ('It shall hold His Name in reverence...'). The legal dimensions of this statement are unclear; moreover, it reflects views which are not now universally held. At most, these words might be thought to afford some constitutional protection for laws dealing with blasphemy, but even this is far from certain. In any event, the Review Group has already dealt with the issue of blasphemy under Article 40.6.1°.i and has suggested a different approach to this question.

Words of this kind can, of course, give rise to misunderstandings and cause needless offence to members of some religious minorities and non-believers. Some of the language of Article 44.1 is so obscure and imprecise in its legal significance that it would in any event call for revision.

One approach would be simply to delete Article 44.1 in its entirety. Quite apart from the fact that the meaning of the section is in many respects uncertain, the Review Group is of the opinion that a clause of this kind – dealing as it does with the State and religion – is not appropriately placed in the Fundamental Rights section of the Constitution, which ought to be concerned exclusively with individual rights.”

5. The Campaign Case

The Campaign case at the High Court and Supreme Court was about the payment of Chaplains in Community and Comprehensive schools. It was claimed that this was an endowment of religion forbidden by Article 44.2.2 of the Constitution, "The State guarantees not to endow any religion".

The Courts found that it wasn't an endowment of religion forbidden by the Constitution, because the State was helping parents with the religious education of their children, who were not obliged to settle merely for religious "instruction".

Justice Barrington in the Supreme Court (page 27) stated:

"The Community and the Comprehensive schools are an attempt to make post primary education available to all the children of Ireland irrespective of their means. They involve a vast increase in the number of children receiving post primary education and a corresponding increase in the number of post primary teachers most of whom are lay people. In community schools it is no longer practicable to combine religious and academic education in the way that a religious order might have done in the past. Nevertheless parents have the same rights to have religious education provided in the schools which their children attend. They are not obliged to settle merely for religious "instruction". The role of the chaplain is to help to provide this extra dimension to the religious education of the children. The evidence establishes that, besides looking after the pastoral needs of the children, the chaplain helps them with counsel and advice about their day-to-day problems. It therefore appears to me that the present system whereby the salaries of chaplains in community schools are paid by the state is merely a manifestation, under modern conditions, of principles which are recognised and approved by articles 44 and 42 of the Constitution."

The Supreme Court sees Religious Education in the opposite way than the ETBI and the Department of Education does. Religious Education comes under Article 42 of the Constitution, and is more than Religious Instruction (Article 44.2.4):

"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 42.2 prescribes that the parents shall be free to provide "this education" (i.e. religious [underlined in original document] 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 parents"

Justice Keane added:

"It was not intended to render unlawful, at a stroke, the system of aid to denominational education, including where appropriate the payment of the salaries of members of religious communities, whose duties might well extend beyond religious instruction in the narrow sense to what in Article 42.4 of the Constitution was referred to as the 'religious and moral formation' of children."

Article 42.4 of the Constitution states that:

"The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the

public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.”

The idea that Religious Instruction (Article 44.2.4) under the Constitution is Religious Education (Article 42) and therefore suitable for all religions and none has no basis under the Constitution or Human Rights law.

Justice Barrington (page 26) went on to say:

It is in this context that one must read Article 44 S.2 s.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 Constitution therefore distinguishes between religious “education” and religious “instruction” — the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the constitution cannot protect him from being influenced, to some degree, by the religious ethos” of the school. A religious denomination is not obliged to change the general atmosphere of that school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

These are the schools that are supposed to be the alternative to denominational schools.

The Irish Human Rights Commission in their Report Religion & Education: A Human Rights perspective stated that:

“Such Deeds of Trust are considered to be legally binding. Although these schools were not intended to be denominational in the traditional sense, in practice, due to the manner in which they were established and governed, they are. This context is important in understanding the manner in which the case was pursued.”

“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 denominational 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, or would seek education in a denomination not available to them, which presumably must equally be protected by Article 42.”

“230 If Barrington J’s judgement 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 Deeds of Trust and the Model Agreement recognise the Right of parents for their child not to attend Religious Instruction or worship.

In Gerry Whyte’s analysis called, “The Role of the Patron/Trustee in a Community and Comprehensive School – A Legal Perspective”, he States that:

“It is clear from this provision that the State only has a rather attenuated constitutional obligation to “endeavour to supplement and give reasonable aid” to second level education and that in doing so, it must respect the rights of parents, especially in relation to the religious and moral formation of their children. In Campaign to Separate Church and State Ltd v Minister for Education [1998] 3 IR 321, the Supreme Court, per Barrington J, read this provision as obliging the State actively to assist parents, through the educational system, with the religious and moral formation of their children. This led the Court to uphold the constitutionality of state funding for chaplains in community schools. However this interpretation of the reference to parental rights in Art.42.4 is questionable as it could be argued that that reference is meant to be a restraint upon, rather than an authorisation for, State action.”
(Document attached – obtained under FOI from the ETB)

The Role of the Chaplain

The payment of Chaplains in Community and Comprehensive schools and designated Community Colleges is part of the Deeds of Trust and the Model Agreement.

The Deeds of Trust state that:

“The Board of Management will appoint a Chaplain nominated by the competent Religious Authority who shall be employed outside the normal quota of the school. He shall be a full-time member of the staff and shall be paid a salary equivalent to that of a teacher in the school.

(xi) Inspection of the teaching of religion shall be the responsibility of the catechetical inspectorate. Such inspection shall be carried out in consultation with the Board and shall be conducted in accordance with agreed procedures.”

Chaplains in ETB schools are nominated by the competent Religious Authority.

In a recent Parliamentary question the Minister of Education said the following: ³⁴

Question:- To ask the Minister for Education and Skills the funding allocated to chaplains in community and education and training board schools in 2018; and the number of chaplains appointed in 2018.

Response:- “My Department allocates chaplain posts to Education and Training Boards (ETB) and Community and Comprehensive schools and colleges. There are currently 156 whole time equivalent chaplain posts allocated to these schools. The annual cost is approximately €9.8m.

The appointment of chaplains to these schools flow from the original agreements concluded when the schools concerned were established. The chaplains perform pastoral and counselling roles and play an important role in supporting student well-being.

Those chaplains who are registered as teachers with the Teaching Council can also teach a minimum number of hours per week.”

Despite the fact that the Minister said that “The chaplains perform pastoral and counselling roles and play an important role in supporting student well-being”, their main function is to help parents with the Religious Education of their children as per the Campaign case. If Chaplains were only providing pastoral and counselling roles then there would be no need for them to be nominated by the relevant religious authority. This is religious discrimination as Chaplains must be nominated by the relevant religious authority which in most cases is the Catholic Church.

The role of the Chaplain is further defined by the ACCS in the ‘Permanent Contract and duties for Chaplains in Community and Comprehensive schools.”

“2.2 Faith teaching and practice are intrinsic to school chaplaincy. Accordingly, the Chaplain is a person of faith, a Priest, Religious or lay person of the relevant faith, committed to the teaching and values of Christ, acting on behalf of the Church and the school community while upholding the teaching and moral standards and practices of the Competent Religious Authority, together with the Characteristic spirit and founding intention of the school.”

The ETBs in their job description for chaplains also use the same wording. ^{35 36}

If there is no Faith Formation in ETB schools, then why is there still Religious Worship, and why are the ETBs just hiring Catholic and Church of Ireland Chaplains with duties to Faith Form?

The Supreme Court stated on page 27-28 of Justice Barrington’s judgment said that:

“The evidence goes to establish that the work of the chaplains is highly valued by parents. Nevertheless it may be worthwhile entering two caveats. First this judgement proceeds upon the basis that the system of salaried chaplains is available to all community schools of whatever denomination on an equal basis in accordance with their needs. Secondly while it is obviously right and proper that Chaplains should counsel and advise any child who may consult him about its problems, it would be constitutionally impermissible for a chaplain to instruct a child in a religion other than its own without the knowledge and consent of its parents.”

Chaplains in ETB schools do ‘instruct’ children in a religion other than their own without the knowledge and consent of their parents. According to their Contract, Chaplains have four hours class contact time per week.

Parents are never informed that the Chaplain (who is a person of faith), whose purpose is to Faith Form (as per their Contract), is instructing their children in one or more religions, despite it being “constitutionally impermissible for a chaplain to instruct a child in a religion other than its own without the knowledge and consent of its parents.” How do Chaplains even know what religion a student is or whether they have a religion? This raises more issues under GDPR, as does questioning parents when they try to opt out their children.

5. Faith Formation in ETBs

There were never two separate classes for Religion in ETBs or denominational schools at Junior Certificate level. The NCCA second level Religious Education curriculum was designed to support Faith Formation.

Here is a quote from 'Religious Education in the Junior Certificate – Briefing Note in relation to the likely concerns of the Episcopal Conference (Document attached – obtained under FOI from the NCCA).

“3. The nature of the new syllabuses and their relationship to existing programmes.

3.1 Optional Syllabuses

These syllabuses are optional. Schools may continue in offering current syllabuses. Other schools may choose to offer the new syllabuses to all or some of their students.

3.2 Catechetical programmes.

The aims of the syllabuses make it clear that they are not designed to meet the 'faith formation' or 'catechetical' requirements of any religious denomination. However, many schools intend using them as a support for such work in school, particularly at Junior Certificate level. The syllabus for Junior Certificate has been designed to offer this flexibility. The Episcopal Conference has commissioned work on guidelines in this regard and the NCCA's education officer has briefed the working group and met with the author on a number of occasions.”

In their Report on Religion and Education; A Human Rights perspective the Irish Human Rights & Equality Commission stated that: ³⁷

62. The Guidelines have the stated objection of assisting in the faith formation of Catholic students in the Junior cycle. It is noted, however, that the Junior Certificate Religious Education syllabus is an optional subject for the Junior Certificate exam. At individual school level it may be possible to make the subject compulsory but this does not override the right of students to be exempted from such instruction in accordance with the Education Act (see further below). Schools may in addition have separate RE classes in addition to the Religious Education syllabus, and it appears this happens most often at Senior Cycle Level where far fewer students take the Religious Education Syllabus for the Leaving Certificate.”

Circular Letter 013/2018 issued by the Department of Education in 2018 states the following:

“The NCCA developed curriculum for Religious Education currently also serves to meet the religious instruction requirements of the Catholic Church and schools can continue this arrangement for pupils whose parents elect for Catholic religious instruction or other parents who wish to follow the NCCA curriculum, and where that is the case it is important in the information provided to parents that they are made fully aware that the curriculum is not necessarily confined to learning about religions.”

Circular Letter 0062/2018 goes on to say that:

“The Irish Catholic Bishops' Conference published guidelines for the faith formation and development of Catholic students which built on the content of the Junior

Certificate Religious Education Syllabus 1999 and the Leaving Certificate Religious Education Syllabus 2006**. In addition, parental experience conveyed to the Department suggests that in some schools there has been a practice of delivering Catholic religious instruction within class periods where the NCCA Religious Education syllabus is time-tabled.”*

“Where a school decides to offer religious instruction in line with the requirements of any particular individual religious denomination, it must not be associated with or integrated to any degree with the NCCA-developed Religion Education syllabus being provided in timetabled class periods. Such religious instruction must be provided as a discrete separate subject which will be external to the Department-approved NCCA Religious Education syllabus.”

When the NCCA Religious Education course was introduced in 2000 the vast majority of ETB schools had a religion class that was Catholic. When those schools introduced the NCCA Religious Education course they did not just abolish Catholic religion class. They used the NCCA RE course to support Faith Formation. They just combined the NCCA Religious Education course with the Guidelines for the Faith Formation and Development of Catholic Students. Religion Teachers do not need the Guidelines anymore because they take modules in their training to enable them to teach Catholicism. ³⁸

There was never five hours of religion classes in any ETBs that we have knowledge of.

Circular Letter 0062/2018 was the first time that the Department of Education has recognised that there is an issue with integrating the Guidelines for the Faith Formation and Development of Catholic Students into the NCCA Religious Education course. The Overarching Statement issued by the ETBI put a stop to what we see as a pressing Constitutional and Human Rights issue. It was an opportunity lost to protect the Rights of minorities.

We know that Faith Religious Formation/Instruction is taught in ETB schools because of the amount of documents that we got under FOI. In the past Religious Education teachers in ETBs were invited to and attend in-service training organised by their local Diocesan Advisor. The amount of material sent by email to the ETBs by the Diocesan Advisors clearly show that ETB schools do and will continue to indoctrinate minorities into Catholicism. They don't see any issue with it as Faith Formation is seamlessly integrated in the NCCA RE course. Their understanding of 'Respect' and 'Indoctrination' are at odds with Human Rights law.

ETB schools still have Religious Worship even though they are now claiming not to have Religious Formation/Instruction. They are still paying Chaplains to help parents with the Religious Formation of their children even though they are claiming that they don't do Religious Formation/Instruction. As you can appreciate this doesn't make sense.

The very same issue has arisen in denominational schools. This is what the Principal of a Catholic school tweeted in 2018:

“To be very clear we do not offer any facility to opt out of Religious Education classes because we focus on learning about religion and non religious viewpoints. We do not offer religious instruction.” (Dr Aine Moran, Principal of Le Cheile SS Dublin 15)

So we have the Principal of a Catholic school stating publicly that they don't do Religious Instruction (Faith Formation) and now we have the ETBs claiming that they don't do it either! From our perspective Faith Formation, Religious Instruction, Religious Education and Respect seem to mean whatever a particular patron body claims they mean. Those meanings are never based on Human Rights law. Le Cheile school has since amended its

policy by removing the word 'compulsory'. Regardless of this they thought it was in order to make the course compulsory with elements of Faith Formation in it.

The Catholic Church has rejected the Toledo Guiding Principles which are based on Human Rights because they believe that: ³⁹

“the Document contains a reductive view of religion and a conception of the secular nature of States and their neutrality that obfuscates the positive role of religion, its specific nature and contribution to society. In doing so, the document contradicts what has always marked the OSCE’s understanding of religion.”

In their Submission (attached) to the NCCA on the then proposed course on Education about Religions, beliefs and ethics the Catholic Bishops stated that:

“These approaches require teachers to adopt and promote a pluralist approach to religion. This is an approach to religion that goes against the philosophical basis of Catholic religious education. Such a contradiction would place teachers in a very difficult position where conflicting philosophical approaches to Religious Education would have the potential to create significant confusion.”

The Catholic Bishops will resist divesting to a Patron Body that does not share their philosophical basis for Religious Education.

Here are three articles with links to documents got under FOI from the ETBs. These documents show the influence that the Church had on the GMGY course.

<https://www.teachdontpreach.ie/2019/01/cns-schools-catholic-vision/>
<https://www.teachdontpreach.ie/2019/01/cns-religion-course-human-rights-minorities/>
<https://www.teachdontpreach.ie/2019/01/cns-religion-course-human-rights-minorities/>

The Chair of the NCCA Religious Education Reference Group for the new specification of Religious Education at second level was Fr. Gareth Byrne who is Director of the Centre for Religious Education in DCU.

This is what DCU state about Dr Gareth Byrne: ⁴⁰

“Dr. Gareth Byrne, Associate Professor of Religious Education, is Director of the Mater Dei Centre for Catholic Education at the DCU Institute of Education, DCU St. Patrick's Campus. He is a member of the Institute of Education's Faculty Board.

Dr. Byrne's teaching, research and engagement focus is on themes associated with Catholic education, religious education and faith development. He is a member of the executive of the Religion Teachers' Association of Ireland, of the National Faith Development Team of the Irish Catholic Bishops' Conference, of the Episcopal Council for Pastoral Renewal and Adult Faith Development, of the Episcopal Council for Catechetics and of the National Training Authority for the Permanent Diaconate and the Dublin Diocesan Board of Formation in Ministry.

Dr. Byrne is the Chairperson of the National Council for Curriculum and Assessment (NCCA) Religious Education Development Group, developing the specification for Religious Education as a subject available to all students, as set out under the Framework for Junior Cycle 2015 published by the Department for Education and Skills.

Dr. Byrne was previously the Head of Religious Education (2010-2016) at Mater Dei

Institute of Education. He was also the founding Director of the Irish Centre for Religious Education (2011-2016) and Coordinator of the RE pathway of DCU's Doctorate of Education Programme (2012-2016).

At various times Dr. Byrne has been Head of Education at Mater Dei Institute of Education (2006-2010), Academic Leader for Learning and Innovation (2009-2012) Chairperson of the BRelEd Programme (2008-2010), of the Institute's Masters Programmes (2000-2004), and joint-chairperson of the MREd(Primary), provided with St Patrick's College Drumcondra, (2001-2008). Previously he was Director of Holy Cross College Clonliffe, Dublin (1995-2000). He completed his licentiate and doctoral studies at the Salesian University in Rome (1989-1994), and taught religious education and was school chaplain at Colaiste Dhulaigh, Coolock, Dublin (1985-1989).

Gareth is a priest of Dublin Diocese and has twice been Chairperson of the Council of Priests in the Diocese."

The Irish Centre for Religious Education was formerly known as the Mater Dei Institute. They still kept their ethos when they amalgamated with DCU, and cemented their influence in the University. We have attached the agreement between Mater Dei and DCU.

Teachers who are training at DCU for the Bachelor in Religious Education take modules to prepare them to work in denominational schools.

"The core curriculum for teacher preparation will be denominationally neutral and common to all but will, as required, allow for the delivery of modules to prepare teachers appropriately for employment in denominational schools."

"The Denominational Centres within the Institute of Education will have specific responsibility for delivering their respective denominational modules as well as engaging closely with their respective schools."

"Recognising the importance of respecting and supporting the distinctive ethos and traditions of the broad religious traditions involved, it is proposed that each Centre be appropriately supported by an Advisory Council, appointed by the relevant Archbishop/Church authorities."

This also applies to ETB schools because of the Deeds of Trust, Model Agreement, Circular Letter 73/74 and Circular Letter 7/79. Student teachers are hardly likely to refuse to take these modules when they may need them to work in denominational and ETB schools.

As for the core curriculum for teacher preparation being denominationally neutral, that has no meaning in Human Rights law. Any core curriculum must be Objective, Critical and Pluralistic and based on Human Rights. The NCCA Religion curriculum is not that.

The Catholic philosophy of education is seamlessly integrated into teacher training where the definition of Human Rights, Indoctrination, Religious Instruction, Religious Education and Respect are determined by those who have influence and control.

We have never heard of any Religious Education Teacher or Principal in any ETB school pointing out that the NCCA Religious Education course or the GMGY course disrespects the Rights of non religious families and secularists by contributing to the spiritual and moral education of their children through religion. Nor have we heard them saying that just 'acknowledging' the non religious interpretation of life is not Respecting atheists and those seeking secular education for their children. Those are General Principles of the European Court.

The European Court sees its General Principles as protecting pluralism. In Ireland you can contribute to the moral and spiritual development of children from non religious and atheist families through religious education and call that pluralism, diversity and inclusion. You can also teach children from non religious/atheist families to Respect religious beliefs and call that inclusion, pluralism and diversity.

One of the main aims of the new Religious Education specification introduced in schools last September is to teach children about the relevance of religion to their lives. These aims can only be viewed as the State interfering in the Constitutional and Human Rights of some parents to ensure that the teaching of their children is in conformity with their convictions.

The European Court has stated in the Folgero case that: ⁴¹

“84 (b) ... The second sentence of Article 2 of Protocol No. 1 aims in short at safeguarding the possibility of pluralism in education, which possibility is essential for the preservation of the “democratic society” as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised (see Kjeldsen, Busk Madsen and Pedersen, cited above, § 50).

In March 2018 at the United Nations the representative of the Holy See stated that: ⁴²

“Of the utmost concern, the use of the term freedom from religion, which is not contemplated in the international instruments, reveals a patronising idea of religion, going beyond the mandate of the special rapporteur.”

The Holy See is simply wrong when it claims that United Nations Human Rights treaties do not protect the Right to Freedom From Religion. The United Nations Human Rights Committee General Comment No. 22, on Article 18 (Freedom of Thought, Conscience or Religion) clearly states: ⁴³

“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 Catholic Church philosophy of education and Human Rights law are incompatible. The Church has influence and control over the delivery of Religious Education courses, ethics, and any moral formation in Irish schools. That includes multi-denominational schools. Why do they even want to teach children from non religious families the relevance of religion to their lives?

It doesn't matter what Patron body a school operates under, the State is still responsible to ensure Human Rights are Respected. In the Louise O'Keeffe case at the European Court (28th January 2014 Application no. 35810/09), the European Court stated that: ⁴⁴

“151. Finally, the Government appeared to suggest that the State was released from its Convention obligations since the applicant chose to go to Dunderrow National School. However, the Court considers that the applicant had no “realistic and acceptable alternative” other than attendance, along with the vast majority of children of primary school-going age, at her local National School (Campbell and Cosans v. the United Kingdom, 25 February 1982, § 8, Series A no. 48).”

Prof Gerry Whyte in "The Role of the Patron/Trustee in a Community and Comprehensive School – A Legal Perspective" (document attached) stated that:

"1. Constitutional context for education

The matter of education generally is addressed in Article 42 and in a number of the provisions of Article 44. The former Article clearly reflects Roman Catholic social teaching inasmuch as it explicitly recognises the primary role of parents in relation to the education of their children by acknowledging the constitutional right and duty of parents to provide for the education of their children and the freedom to provide such education in private schools.

The State has a subordinate role to that of parents in relation to the education of children. Article 42.4 obliges the State to provide for free primary education and to 'endeavour to supplement and give reasonable aid to private and corporate educational initiative', while always having due regard to the rights of parents, especially in the matter of religious and moral formation.

It follows that parents are constitutionally free to send their children to denominational schools and, should they do so, the State may assist such educational initiative. (In providing such assistance, however, the State may not make any distinction on the ground of religious profession, belief or status: Article 44.2.3^o).

*That provisions of this nature endorsed denominationally controlled education was accepted by the Supreme Court in *Crowley v Ireland* [1980] IR 102 where every member of the Court subscribed to the view that the existing arrangements for the management of primary education along denominational lines were constitutionally valid.*

In contrast, the ideological ancestry of Article 44, which, inter alia, prohibits discrimination on denominational grounds in the provision of State assistance for schools, safeguards the rights of those children who do not wish to receive religious instruction at school and proscribes State endowment of religion generally, lies in nineteenth century liberalism.

The tension between these ideologies did not emerge for many years because of the dominant position of the Roman Catholic Church in Irish society which resulted in an alignment of the wishes of the vast majority of parents with the position of the Church. Now the constitutional primacy of parents in relation to the education of their children is becoming more obvious in practice, as it always had been in theory."

There are, as Prof Whyte points out, 'tensions' between various articles in the Constitution. Instead of recognising these tensions, the Department of Education, the NCCA and the ETBs are trying to push minorities into accepting Roman Catholic Social teaching that is in conflict with Human Rights. The ETBs simply have no Right to Indoctrinate minorities in this manner. We are seeking our Constitutional and Human Rights and we will not accept anything less.

Notes

- ¹ <http://hudoc.echr.coe.int/eng?i=001-57420>
- ² <https://academic.oup.com/ojlr/article/1/1/15/1547673>
- ³ <http://hudoc.echr.coe.int/eng?i=001-99384>
- ⁴ <http://hudoc.echr.coe.int/eng?i=001-82580>
- ⁵ <https://web.archive.org/web/20110721123314/http://www.constitution.ie/constitutional-reviews/crg.asp>
- ⁶ <https://www.ihrec.ie/documents/religion-and-education-a-human-rights-perspective/>
- ⁷ https://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiLnM6VuN_kAhXhRxUIHTpfBAEQFjAAegQIAhAB&url=http%3A%2F%2Fconstitutionproject.ie%2F%3Fp%3D554&usg=AOvVaw06sQ2qf5EPxygQPSGXa3rU
- ⁸ [This link will download a pdf version of the document] <http://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=001-73515&filename=KJELDSEN%2C%20MADSEN%20AND%20v.%20DENMARK.pdf>
- ⁹ <http://hudoc.echr.coe.int/eng?i=001-57509>
- ¹⁰ <http://hudoc.echr.coe.int/eng?i=001-81356>
- ¹¹ <http://hudoc.echr.coe.int/eng?i=001-108145>
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