

Atheist Ireland

Submission to the Joint Committee on Gender Equality on the Recommendations of The Citizens' Assembly on Gender Equality



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1. Introduction to Atheist Ireland

Atheist Ireland promotes atheism, reason, and an ethical, secular society. Since being formed in late 2008, we have campaigned for a secular Irish constitution, parliament, laws, government, and education and healthcare systems. We are partners in the dialogue process between the Government and religious and nonreligious bodies. We have addressed various Oireachtas Committees, the Constitutional Convention, Citizens Assembly, United Nations Committees, the OSCE, Council of Europe bodies, and the Presidents of the European Union.

2. The Constitution, Equality and the Family

Atheist Ireland supports Assembly recommendations 1-3 regarding Articles 40 and 41 of the Constitution. We believe there should be comprehensive constitutional change to fully reflect human rights law without discrimination based on sex, sexual orientation, gender, or marital status.

In addition to Articles 40 and 41 which the Assembly has highlighted, Article 42.1 about Education should also be amended to apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.

The Constitution Review Group of 1995 stated that: ¹

“Articles 41 and 42 of the constitution “were heavily influenced by Roman Catholic teaching and Papal encyclicals. They were clearly drafted with only one family in mind, namely, the family based on marriage.”

“The family recognised and protected in Articles 41 and 42 is the family based on marriage. In *The State (Nicolaou) v An Bord Uchtála Walsh J* in the Supreme Court judgment stated that it was quite clear “that the family referred to in [Article 41] is the family which is founded on the institution of marriage and, in the context of the Article, marriage means valid marriage under the laws for the time being in force in the State.”

¹ <https://web.archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf>

The Constitution Review Group stated about Article 42.1, about whether the rights of parents in regard to education should be confined to married parents:

“A further consideration is that Article 42 as drafted envisages only what might be termed the straightforward case of a married couple and their children. Indeed, the reference to parents in Article 42.1 is confined to the family based on marriage: see, for example, *The State (Nicolaou) v An Bord Uchtála* [1996] IR 567. For all the reasons already set out in the discussion on Article 41 with regard to the position of non-marital parents, the Review Group is of the opinion that, consistently with these earlier recommendations, it is appropriate that the rights under Article 42 should apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.”

Article 42.1 is an important right with regard to parents and their children as it obliges the state to respect the rights of parents to provide for the religious and moral, intellectual, physical and social education of their children. The Supreme Court has said that Article 44.2.4 (the right to not attend religious instruction) must be read in the context of Article 42.1. The Supreme Court has also linked Article 42.1 with Article 40 and Article 41 (para 191, Court of Appeal, *Burke* case 2021).²

Article 42.1 only refers to parents who are married. This means, taking into account Article 40.1, that unmarried parents are discriminated against in the education system on moral or social grounds.

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.³ Human rights law does not discriminate against families on religious and moral grounds.

3. Online Harassment and Abusive Content

Atheist Ireland supports the Assembly’s recommendation 24(a) regarding online content that constitutes sexual harassment, bullying, stalking, sexually violent or abusive content. We elaborate here on recommendation 24(b) regarding penalising hateful and abusive language.

Atheist Ireland made a submission to the Department of Justice’s consultation on hate crime and hate speech laws. We recommended that the State should tackle prejudice against groups through education, and tackle prejudice-motivated crime through the law, while protecting the right to freedom of expression, based on human rights principles and standards.⁴

There is a distinction between the examples of behaviour in recommendation 24(a) and 24(b). The former examples (online content that constitutes sexual harassment, bullying, stalking, sexually violent or abusive content) can be more easily tackled by the law as criminal behaviour, while the latter examples (hateful and abusive language) are more difficult to criminalise consistently with human rights principles and standards.

Laws should be accurate, understandable, and enforceable. Their words and definitions should be coherent, universal and inclusive, with clear and justified boundaries, and free from ideological assumptions. A person should be able to know whether or not they are breaking it. Laws based on

² [https://www.courts.ie/view/judgments/4a492524-b29b-4dc3-be10-ad483ee18ac6/038a55c4-d134-49d0-b933-890a0d8c67fb/2021_IECA_67%20\(Unapproved\).pdf/pdf](https://www.courts.ie/view/judgments/4a492524-b29b-4dc3-be10-ad483ee18ac6/038a55c4-d134-49d0-b933-890a0d8c67fb/2021_IECA_67%20(Unapproved).pdf/pdf)

³ <https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

⁴ <https://atheist.ie/2019/12/prejudice-motivated-crime/>

ambiguous or emotive words cannot do this. ‘Hate crime’ laws are fundamentally about prejudice and bias on the basis of being a member of a group with common characteristics.

In October 2019, David Kaye, the then United Nations Special Rapporteur on the promotion and protection of the freedom of opinion and expression, published a report to the United Nations General Assembly on the human rights law that applies to freedom of expression, with particular regard to online ‘hate speech’. We suggest that you consider the analysis and recommendations in this report (link in footnote below).⁵

4. School Curriculum including RSE

Atheist Ireland supports the Assembly’s recommendation 27 regarding school curriculums promoting gender equality and diversity, and the RSE curriculum explicitly covering gender power dynamics, consent and domestic, sexual and gender-based violence both online and offline.

There should be mandatory provision of sexual and reproductive health education, for adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016; and amending of Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act to ensure that it is delivered objectively without influence from religious ethos.

The State recognises that all adolescent boys and girls have a right to objective sex education, but it fails to protect that right because of religious discrimination. Religious bodies and Education and Training Boards interfere in access to this right, and the State does nothing to ensure that parents have an effective remedy to vindicate that right for their children. This means the State has failed to protect parents and children from religious discrimination.

In 2017 the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that Ireland should integrate objective compulsory sex education into the school curriculum, and should closely monitor and evaluate its delivery by schools. This was a result of Atheist Ireland raising this issue with the CEDAW. It was the first time the UN examined sex education in Irish schools. The Recommendation from the UN Committee reads:⁶

“(c) Integrate compulsory and standardised age-appropriate education on sexual and reproductive health and rights into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviours and focused on preventing early pregnancies; and ensure that it is scientifically objective and its delivery by schools is closely monitored and evaluated;”

Atheist Ireland recommends the following regarding the content of objective sex education:

- (a) mandatory provision of sexual and reproductive health education, for adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016;
- (b) a single consistent curriculum for relationships and sexuality education, across all schools, as recommended by the Ombudsman for Children in 2016; and
- (c) scientifically objective, standardised, age-appropriate education on sexual and reproductive health and rights, as recommended by the UN Committee on the Elimination of Discrimination against Women in 2017.

⁵ https://www.ohchr.org/Documents/Issues/Opinion/A_74_486.pdf

⁶ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en

Atheist Ireland recommends the following regarding the delivery of objective sex education:

(d) the content must be delivered in an objective, critical and pluralistic manner, that avoids indoctrination, outside of optional religion classes, as recommended by the Irish Human Rights and Equality Commission in 2015; while

(e) ensuring a neutral studying environment, including in denominational schools, outside of optional religious instruction classes, as raised with Ireland by the UN Human Rights Committee in 2014.

(f) To do this, the Oireachtas must amend Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which have been identified as problems by the NCCA in 2017.

5. Domestic, Sexual and Gender-Based Violence

Atheist Ireland supports the Assembly's comprehensive set of recommendations in 37 to 41 including a national strategy to prevent, counter, and eliminate tolerance of domestic, sexual and gender-based violence, supporting justice and resources for victims/survivors. We support and want to elaborate on one aspect of recommendation 41.

41. Recognise female genital mutilation (FGM) as a ground for seeking asylum, and provide culturally sensitive specialised services for victims/survivors.

In 2020, the United Nations Special Rapporteur on Freedom of Religion and Belief, Mr Ahmed Shaheed presented a report to the UN addressing gender-based violence and discrimination in the name of religion or belief.⁷

He stated that in a number of States worldwide religious precepts underlie laws and state-sanctioned practices that constitute violations of the right to non-discrimination of women, girls and lesbian, gay, bisexual and transgender (LGBT+) persons. In other States, claims of religious freedom are being used to roll back and seek exemptions to laws that protect against gender-based violence and discrimination.

The Special Rapporteur provided cases of both phenomena and their impact on gender equality and freedom of religion or belief worldwide. He explored freedom of religion or belief and non-discrimination as two and mutually reinforcing rights and clarifies the existing international legal framework that governs their intersection. He concluded by emphasising the responsibility of States to creating enabling environments to advance the non-discrimination and freedom of religion or belief rights of women, girls and LGBT+ persons.

"48 The Special Rapporteur notes that while religious organisations are entitled to autonomy in the administration of their affairs, such deference should be extended within a holistic conception of human rights grounded in the universality, indivisibility, interdependence and inalienability of all human rights. For example, the Committee on Economic, Social and Cultural Rights has called on States to ensure that church-run institutions are not permitted to discriminate against non-ecclesiastical employees on grounds of religious belief, sexual orientation or gender identity.

49 He notes, however, that the principle of institutional autonomy does not extend to State deference to harmful discriminatory gender norms. Nor does it oblige States to defer from intervening to prevent harmful practices because said practices are informed by 'religious ethos'; including discriminatory acts that have as their purpose or effect the nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis."

⁷ https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_48.docx

6. The National Maternity Hospital

This issue has remained controversial since the report of the Citizen's Assembly. In a democratic republic, the State should own and directly run the national maternity hospital. It should not cede control over this essential public service to any private body, never mind to a charity associated with the Catholic Church, which has an appalling record of human rights abuses and an ethos that opposes reproductive rights for women.

Atheist Ireland campaigns for a secular healthcare system based on compassion, human rights and the medical needs of patients. The State should remove, not reinforce, the traditional privileges that religious bodies have in our healthcare provision.

St. Vincent's Holdings is a religious charity. It is recognised as a religious institution protected by Article 44.2.5 of the Constitution. Section 37 of the Employment Equality Act also protects the ethos of this religious institution. In the matter of Article 26 of the Constitution and in the matter of Section 37 of the Employment Equality Act in 1997 the State argued at the Supreme Court: ⁸

"Counsel for the Attorney General submit that insofar as the Bill purports to authorise a religious discrimination or distinction, the discrimination or distinction authorised is a form of positive discrimination necessary (and no more than is necessary), to give effect to the provisions of Article 44 of the Constitution. Moreover they submit that the Bill would offend Article 44 of the Constitution if the ban on religious discrimination contained in s. 6 of the Bill stood alone without the exception contained in section 37. They deny that the Bill in any way authorises the endowment of any religion. They say moreover that State aid to religious and charitable institutions maintained by various religious denominations is authorised by the Constitution and the kind of distinctions made by the Bill are also authorised by necessary implication.

Moreover they say that the institutions referred to in the distinctions under discussion are religious, educational or medical institutions under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values. These bodies will invariably be boards of governors, trustees or guardians under the control or influence of the various religious denominations and are the "institutions for religious or charitable purposes" referred to in Article 44, s. 2, sub-s. 5 of the Constitution. Counsel admit that a tension does exist between the right to equality guaranteed by Article 40, s. 1, the right to free profession and practice of religion guaranteed by Article 44, s. 2 and the right to earn a livelihood guaranteed by Article 40, s. 3 of the Constitution, but they submit that the sections under discussion represent a balanced attempt by the Oireachtas to resolve these tensions."

The Supreme Court accepted the submission by the State in relation to private religious health institutions. The Court stated that:

"Article 44, s. 2, sub-s. 5 provides that every religious denomination is to have the right to maintain institutions for religious or charitable purposes. One can get a clearer picture of what is meant by "religious denomination" if one looks at two sub-sections of the Constitution which were deleted by the fifth amendment to the Constitution in 1972. Section 1, sub-s. 2 (now deleted) of Article 44 referred to the special position of the Holy Catholic Apostolic and Roman Church as Guardian of the faith professed by the great majority of the citizens. Sub-section 3 (also deleted) went on to provide as follows: "The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution."

The term "religious denomination", was therefore intended to be a generic term wide enough to cover the various churches, religious societies or religious congregations under whatever name they wished

⁸ [http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/\(WebFiles\)/EB802820AD644CFC802575F3003323B1/\\$FILE/Employment%20Equality_%5B1997%5D%20%20IR%20321.htm](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/(WebFiles)/EB802820AD644CFC802575F3003323B1/$FILE/Employment%20Equality_%5B1997%5D%20%20IR%20321.htm)

to describe themselves. These various religious denominations may control religious, educational or medical institutions, whether directly or through a board of guardians or trustees and it appears to the Court that these are the religious educational and medical institutions referred to in s. 37. sub-s. 1 of the Bill and that they are also governed by the phrase "institutions for religious or charitable purposes" referred to in Article 44, s. 2 sub-s. 5 of the Constitution.

The Court rejects the submission that a private hospital could be a medical institution within the meaning of s. 37, sub-s. 1 of the Bill without being an institution for charitable purposes referred to in Article 44, s. 2 sub-s. 5 of the Constitution. The Court accepts the submission of counsel for the Attorney General that the term "institutions for religious or charitable purposes" is at least broad enough to cover the four categories of legal charities adopted by Macnaghten L.J. in *Commissioners for Special Purposes of Income Tax v. Pemsel* [1891] A.C. 531 and approved by the former Supreme Court in *Barrington's, Hospital v. Commissioner of Valuation* [1957] I.R. 299 and by Keane J in *In re the Worth Library* [1995] 2 I.R. 301.

At p. 583 of the report Macnaghten L.J. stated that:

"How far then, it may be asked, does the popular meaning of the word 'charity' correspond with its legal meaning? 'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."

It seems clear that the courts in Ireland recognise St. Vincent's Holdings as a religious institution protected by Article 44.2.5 of the Constitution as it is a registered religious charity. Article 44.2.5 states that: "Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes."

As St. Vincent's have the right to manage their own affairs under Article 44.2.5 of the Constitution we cannot see how the full range of reproductive healthcare will be available. In addition Section 37 of the Employment Equality Act protects the ethos of St. Vincent's because it is recognised under the Act as a religious institution. There is no Catholic hospital in the world that provides abortion services.

The Catholic Church opposes attempts to end discrimination against women, girls, and LGBT people. In the case of the UN Special Rapporteur's report cited above, the Holy See stated: ⁹

"Particularly unacceptable and offensive are the numerous references that recommend that freedom of religion or belief and conscientious objection must be surrendered for the promotion of other so-called "human rights", which certainly do not enjoy consensus, thus being a sort of "ideological colonisation" on the part of some States and international institutions."

Given our history it is not surprising that our Constitution, laws and policy reflect Catholic Church teaching on Freedom of Religion and Belief and discrimination. But Catholic Church teaching on Freedom of Religion and Belief and Human Rights law are incompatible. We need a pluralist Constitution and laws that reflect and protect basic human rights.

⁹ <http://www.nuntiusge.org/images/STATEMENTS/20200302.pdf>