

Atheist Ireland

To: Norma Foley TD
Minister for Education

13 April 2021



Dear Minister Foley,

We are seeking an online meeting to discuss the recent decision of the Court of Appeal in the Burke case (Burke v Minister for Education 9.3.21). We believe that this case vindicates our Constitutional right to ensure that our children do not attend any type of religious instruction that is against the conscience of their parents.

We want to discuss this in the context of the following related matters:

- The fact that the Supreme Court has found that Religious instruction under Article 44.2.4 of the Constitution must be read in conjunction with Article 42 (Religious Education) which contemplates children receiving religious education in schools in accordance with the wishes of parents (Page 25,26 Campaign to Separate Church & State case 1998).
- The legal opinion that we sent to you on 12 August 2020 on the right to not attend religious instruction under Article 44.2.4 of the Constitution. This is a personal right protected under Article 40.3.1. The State and individual schools must respect this right.
- The report that we sent to you on 20 October 2020 showing that schools are refusing to comply with Section 62.7(n) of the Education (Admission to Schools) Act 2018. This Section obliges schools to publish an Admission Policy which must include details of the school's arrangements for students who do not want to attend religious instruction.

The Burke Case

In the recent Burke case the Court of Appeal has stated that the Campaign case in 1998 is binding authority (para 171). We believe that because there is explicit constitutional recognition of the right to not attend religious instruction, which must be read in context with Article 42 (J. Barrington Campaign case, pages 25,26), appropriate consideration should be given in policy decisions by the Department of Education.

Our children are disadvantaged by our decision to exercise our Constitutional rights, and the fact that the Department continues to leave it up to each school how they implement the right, notwithstanding the fact that you have a Constitutional duty to vindicate our rights.

If students do manage to exercise their right to not attend religious instruction they are left sitting in the class and no other subject is offered. They lose out on precious school time and at second level they cannot access an exam subject because their parents exercise their Constitutional rights for them to not attend syllabus Religious Education.

We do not believe that it is possible to continue to insist that it is up to each individual school how they implement the Constitutional right to not attend religious instruction, given that the Court of Appeal in the Burke case did not accept your argument for a limited view of the duties imposed on the State under Article 42 of the Constitution.

Nor do we believe that it is possible for you to continue to claim that syllabus Religious Education is suitable for all religions and those with no religion, because clearly that decision belongs to parents under Article 42 and Article 41 in conjunction with Article 44.2.4 and not the Department of Education, the NCCA, Schools, the TUI, or Teachers. The Constitutional position is the opposite of what you are claiming.

The Campaign Case

Justice Barrington in the Campaign case at the Supreme Court stated that 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. How is that different for Religion teachers and schools who enrol students into syllabus Religion Education classes by claiming that they are for all religions and none?

It is not reasonable for the Department to continue to state that religious instruction only applies to instruction according to the requirements of a particular religion, as clearly that is not the Constitutional position. Unfortunately that is what is happening on the ground in schools. Schools are claiming in their Admission policies that the Religious Education provided by the school is suitable for all religions and none. Some schools integrate the Guidelines for the Faith Formation and development of Catholic students into the State syllabus and never inform students or parents that they are doing this.

Schools just enrol students into religion courses without any consideration of their Constitutional rights. If Parents insist that their child not attend religion classes they are asked to a meeting in the school and many are asked reasons for opting out.

We ask that you again look at this issue given that there are no Department of Education guidelines for schools in place and because there is clearly a duty on the state to respect our constitutional rights as per the Burke case at the Court of Appeal.

Interlinking of Rights

The Court of Appeal stated that the Supreme Court, in the various judgements delivered, interlinked the right to education under Article 42.4 with the balance of provisions set out in the Article, which refer to family, parental rights and duties, and children's rights (para 165).

The Court of Appeal in the Burke case stated that:

190 "We consider that the structure of the Constitution, including the fact that Article 41 relating to the family is immediately followed by Article 42 relating to education, together with the express wording of those Article, place the family at the heart of the provision of education. Parental duty to provide for education is paramount and parental choice in how that is provided is guaranteed. Furthermore, the right to education and the right of a child to realise his or her full potential, has been recognised as part of the natural rights guaranteed by article 40.2. The State, pursuant to Article 41.1.2, also guarantees to protect the family in its constitution and authority."

191 "This Court considers that the case law demonstrates that the relationship between parents, the State and the child as envisaged by Article 40, 41, and 42, is a trifecta not just of the participants but of the rules under which constitutional engagement on education must take place; namely right, duties and powers. It is only through understanding the interwoven nature of those relationships, that clarity can be brought to the complex constitutional provisions on education..."

192. “Taking the interwoven pattern of rights, duties and powers, we understand the true constitutional position to be that there is a duty on the State to protect the family’s authority and the parent’s right to home school. We agree with Laffoy J. In O’Shiel v. Minister for education where she held that in fulfilment of the State’s duty to provide for primary education, the State must have regard to and accommodate the expression of parental conscientious choice and lawful preference.

We consider that the duty of the State to protect the family’s authority and the parents’ right to home school must include accommodation of that expression of parental conscientious choice and lawful preference even with regard to the choice of the parents in providing for secondary schools. The child’s natural rights, together with his or her centrality within article 42, require the child not to be treated as merely incidental to the exercise of the rights of parents and the duties of parents and the State. Instead, the rights of the child to education must receive appropriate recognition by the organs of the State.”

Constitutional Duty to Vindicate Rights

We believe that you cannot continue to disregard your Constitutional duty to vindicate our rights which are derived from the interwoven provisions of the Constitution which make a clear value judgement about the primacy of parental choice in education and the duty of the State to respect that choice, while also guaranteeing the right of the child to education. There are no State Guidelines in place and you leave it up to schools to decide on these issues themselves, despite the duty of the state in these matters.

As the Court of Appeal has upheld the Constitutional rights of home schooled children we believe that our rights as a minority under Article 40, Article 41 and Article 42 in conjunction with Article 44.2.4 would also be upheld, especially given the various judgements on education and the rights of parents and their children.

Yours sincerely

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Chairperson
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