



SUBMISSION TO THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE

February 2012

EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW WITHOUT DISCRIMINATION OF ANY KIND

In its third Report on Ireland in 2007 the ECRI noted that the Irish State had adopted the European Convention on Human Rights Act 2003 to enable persons under Irish jurisdiction to invoke the Convention before the courts. It recommended that Ireland ratify Protocol 12 to the European Convention and it encouraged the State to ratify the UNESCO Convention against discrimination in Education. It further Recommended (Recommendation No. 15) that the Irish Constitution provides for:-

- 1) The principle of equal treatment.
- 2) The State commitment to promoting equality and
- 3) The right of individuals to be free from discrimination on grounds such as race colour, language, religion, nationality or national or ethnic origin.
(General Policy Recommendation No. 7 on National legislation to combat racism and racial discrimination)

Atheist Ireland believes that Ireland cannot ratify Protocol 12 to the European Convention as it is incompatible with the Irish Constitution. Ireland informed the ECRI that this issue was under review as to the manner in which this instrument correlates with existing equality legislation is being examined. Ireland has done nothing about ratifying Protocol 12.

The Irish Constitution is incompatible with the European Convention (Article II of Protocol 1, Article 8,9,10 and 14) and consequently the State cannot ratify Protocol 12 and the

UNESCO Convention on discrimination in education. In 2002 the UN Committee on Economic, Social and Cultural Rights raised concern regarding the inconsistency of Article 40.1 of the Irish Constitution on equality before the law with the principle of non-discrimination.ⁱ

Schools in Ireland are not ‘organs of the state’ within the meaning of the European Convention on Human Rights Act 2004. The Irish State cedes control of education to the interests of private bodies and institutions and it has put in place legislation that enables these private bodies to discriminate against minorities in the education system. It is impossible for parents to get an effective remedy in practice and in law to vindicate their human rights.

Section 7 - 3 (c) of the Equal Status Act 2004 permits religious schools to discriminate in access to education and Section 12.4 and 37.1 of the Equality Acts permits religious schools and hospitals to discriminate in employment in order to uphold their ethos. Section 15 2 (b) of the Education Act 1998 permits Boards of Management to discriminate against minorities in order to uphold the ethos of the patron.

Since the last Report of the ECRI (Recommendation No, 87) the Irish State has done nothing to ensure that pupils are not singled out in schools if they opt out of religious instruction and the religious integrated curriculum (ethos). There is a Constitution right to opt out of religious instruction class in any publicly funded school but the State does not fund the supervision of children who are opted out. Parents are responsible for the supervision of their children if they opt them out of religion classes, religious ceremonies and prayers.

Religious education is integrated into the curriculum and the daily life of the school and it is therefore impossible for parents to opt out their children from religion. The State does not oblige schools to deliver the curriculum in an objective, critical and pluralistic manner. Schools do not inform parents where exactly they are integrating religion into the daily life of the school and the school subjects and it is therefore impossible for minorities to ensure that the teaching of their children is in conformity with their convictions.

As part of their Characteristic Spirit (ethos) some schools have a religious symbol on their uniform. This is nearly always a Christian cross and consequently minorities have no choice but to send their children to school wearing the religious symbol of the religious majority in the area.

The Irish Supreme Court recognises that a religious ethos influences children and that a school is not obliged to change its general atmosphere in order to accommodate minorities. Minorities have no choice but to send their children to schools that operate a religious integrated curriculum (ethos).

Since the ECRI’s last report on Ireland the Irish State has done nothing to encourage minorities to enter the teaching profession (Recommendation 88). In order to become a teacher in Ireland more or less one has to pass exams in teaching the Catholic or Church of Ireland faith. This is not just teaching about faith. All teacher training colleges are denominational. They are publicly funded but controlled by the Churches.ⁱⁱ

Recommendations:

- Irish Constitution: Amend Article 44, on Religion, to explicitly give equal protection to religious and nonreligious philosophical believers.
- Irish Constitution: Amend Article 40.1 on equality before the law with the principle of non-discrimination.
- Remove Section 7 3 (c) of the Equal Status Act 2000 to ensure that children have a guaranteed access to educational establishments without discrimination of any kind.
- Remove Section 12.4 and 37.1 of the Equality Acts which permit schools and hospitals to discriminate on the grounds of religion.
- Ensure that all children have equal access to a basic moral, intellectual and social education in schools (Article 42.3.2) and not one just permeated by religious values.
- Amend Section 15 of the Education Act 1998 to ensure that the curriculum in all schools is delivered in an objective critical and pluralistic manner. Ensure that the rights of those parents seeking secular education for their children are recognised therein.
- Enact legislation to ensure that a common ethics course be an integral part of all B.Ed and Graduate Diploma programmes in the colleges for student teachers based on human rights and equality and also in accordance with the Toledo Guiding Principles.
- Reform the Governance of state funded teacher training colleges to remove the authority of religious bodies.

Under the Irish Constitution the President, judges and members of the Council of state are required to swear a religious oath. The preamble to the Constitution has been invoked in the courts in support of various views.

Recommendations

- Remove the requirement for the President, judges and Council of State to swear a religious oath in the presence of Almighty God (Arts 12, 31, 34), and for the President and judges to ask God to direct and sustain them (12, 34), and replace these with a single neutral declaration that does not reveal any information about the person's religious beliefs.
- Remove the references to all authority coming from the Holy Trinity and our obligations to our divine Lord Jesus Christ (preamble); powers of government deriving under God from the people (6); the homage of public worship being due to Almighty God and the state holding his name in reverence (44); and the glory of God (closing line).
- Remove Section 3.1(c) and 3.4 of the Charities Act 2009, which privileges the advancement of religion over non-religious life stances.

In 2010 Ireland introduced a blasphemy law despite having informed the Venice Commission in 2007 that in general the law provides adequately for these matters.ⁱⁱⁱ For an analysis of the Irish Blasphemy law please see <http://blasphemy.ie/> at 18.58. Prof David Nash^{iv} of Oxford Brookes University discusses the Irish Blasphemy law. The Council of Europe Commission on Democracy through Law ("Venice Commission") called upon COE member states in 2008

to repeal their respective legislation on Blasphemy and that the offence of blasphemy should be abolished (which is already the case in most European States) and should not be introduced.

The United Nations Human Rights Committee in their General Comment No. 34 stated that Blasphemy laws are incompatible with Article 19 of the Covenant.^v Despite this Ireland introduced a Blasphemy law in a country where the non-religious are second class citizens.

Recommendations

- Irish Constitution: Amend Article 40.6.1 to remove the offence of blasphemy.
- Remove Section 36 and 37 of the Defamation Act 2009 (blasphemy offence).

ⁱ <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.77.En?Opendocument> “Extract: 16. The Committee regrets that the State party has not yet undertaken any measures with regard to the Committee’s 1999 recommendation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.”

ⁱⁱ http://www.education.ie/servlet/blobServlet/fpp_sub_donnelly_dr_philomena.pdf

ⁱⁱⁱ <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29006add2-bil.pdf> page 58

^{iv} <http://www.history.brookes.ac.uk/staff/prof.asp?ID=585>

^v <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (para 48)