



Atheist Ireland Submission to Council of Europe on Protection of National Minorities

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1. Introduction

1.1 Atheist Ireland is an Irish advocacy group. We promote atheism and reason over superstition and supernaturalism, and we promote an ethical, secular society where the State does not support or finance or give special treatment to any religion. You can read details of our policies on our website at <http://atheist.ie>.

1.2 Since being formed in late 2008, we have campaigned against the Irish blasphemy law, campaigned for a secular Irish Constitution and a secular Irish education system, lobbied political parties and candidates on secular policies during the recent general election. We have made Submission to the United Nations under the Convention on the Elimination of all forms of Racial Discrimination and the UN Human Rights Council under the periodic review.

1.3 The Irish State maintains that the rights afforded under the Council of Europe Conventions and the various UN Conventions are guaranteed under the Irish Constitution and secured with the European Convention on Human Rights Act 2004. This is simply not the case on the ground as the non-religious suffer discrimination and the abuse of their human rights.

1.4 According to the European Convention on Human Rights Act 2003, every organ of the state must perform its functions in a manner compatible with the European Convention. In order to seek an effective remedy under the European Convention on Human Rights Act 2003, it is expected that a complainant should ask the courts to interpret statutes in a Convention compliant manner and, if that was not possible, to make a declaration of incompatibility. A declaration of incompatibility is not obligatory on the State and places no legal obligation on the State to amend domestic law. 1
Consequently the European Convention on Human Rights Act 2003 does not provide an effective remedy to vindicate the rights of the non-religious in Ireland.

2. Article 4 – Discrimination

2.1 The Irish Constitution is incompatible with Article 4 of the Framework Convention.

2.2 Article 40.1 of the Irish Constitution:

Equality is protected under Article 40.1 of the Irish Constitution, however it is inconsistent with the principle of non-discrimination. The United Nations Committee on Economic, Social and Cultural Rights in their concluding observations in 2002 stated the following on Article 40.1:-

“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.” 2

2.3 Article 40.1 of the Irish Constitution states that: “All citizens shall, as human person, be held equal before the law. This shall not be held to mean that the State shall not in its enactment have due regard to differences of capacity, physical and moral, and of social function.”

2.4 The Irish Human Rights Commission in their Report to the United Nations under the Periodic Review, recommends a Constitutional Referendum on Article 40.1 to proscribe discrimination. 3

2.5 The Constitutional Review Group Report 1995 recommended Constitutional change on discrimination to bring Ireland in line with international human rights instruments.

“A list of rights to be considered for express inclusion in the Constitution would include, in addition, to the un-enumerated rights already listed, the following which are contained in the international human rights instruments... A general right to non-discrimination on such grounds as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Articles 2 and 3 CCPR, Article 14 ECHR)... The General Right to non-discrimination should be contained in a revised Article 40.1.” 4

2.6 Since the Constitutional Review Group Report 1995 and the concluding observations of the UN Committee on Economic, Social and Cultural Rights, there has been no change to the Irish Constitution. Consequently there is no Constitutional guarantee of equality before the law with the principle of non-discrimination. This is incompatible with Article 4 of the Framework Convention.

2.7 Article 44.2.3 of the Irish Constitution.

Article 44.2.3 of the Irish Constitution obliges the state not to discriminate on the grounds of religious profession, belief, or status. This Article does not include philosophical convictions such as secularism.

2.8 Prof Gerry Whyte 5 has stated that:-

“The primary purpose of the guarantee against discrimination is to ensure the freedom of practice of religion. Any law which by virtue of the generality of its application would by its effect restrict or prevent the free profession and practice of religion by any person or persons would be invalid having regard to the provisions of the Constitution, unless it contained provisions which saved from such restriction or prevention the practice of religion of the person or persons who would otherwise be so restricted or prevented.” 6

2.9 Preamble to the Irish Constitution

The preamble to the Irish Constitution reads as follows: “In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Éire, Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, Do hereby adopt, enact, and give to ourselves this Constitution.”

The preamble to the Constitution has been invoked in the courts in support of various views.

2.10 The Constitutional Review Group Report in 1995 stated the following about the legal effect of the religious preamble in the Constitution:-

“Whether the Preamble has legal effect – As indicated above, the Preamble has been cited in legal cases and has been taken into account in judicial decisions, for example, McGee v Attorney General [1974] IR 284, The State (Healy) v Donoghue [1976] IR 325, King v Attorney General [1981] IR 233, Norris v Attorney General [1984] IR 36 and Attorney General v X [1992] 1 IR 1. For this reason and others mentioned in the immediately preceding paragraph it seems that it does have legal effect.” 7

2.11 Prof Gerry Whyte has stated the following on the preamble to the Irish Constitution:-

“The Preamble occasionally features in judicial reasoning, though, as Kelly puts it, “[o]n no occasion has a decision been based solely upon it”; rather “it has been used to lay the ground for the deployment of later parts of the Constitution, or to underpin judgments rhetorically and emotionally.” The specifically religious dimension to the Preamble has been referred to in this way in a number of cases. Thus, it was invoked in support of various views: that a testamentary gift to promote contemplative prayer was a charitable object in law; that the Constitution was consistent with Christian beliefs (and consequently, the criminalization of homosexuality was not unconstitutional); that the natural human rights protected by the Constitution are derived from divine law; that laws of general application must accommodate religious interests if that is necessary to ensure free practice of religion; and that the Constitution was careful to restrain the State and any other organization from usurping the functions of the individual in the right and duty of achieving his or her purpose and fulfilling his or her destiny to the best of his or her ability. One legitimate criticism that may be leveled at the Preamble is that it is somewhat sectarian in tone; the reference to the fathers who were sustained “through centuries of trial” is generally taken to mean Catholics.” 8

2.12 Article 6 of the Irish Constitution

Article 6 of the Irish Constitution reads as follows: “All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good”.

The conclusion of the Constitutional Review Group Report in Article 1995 on Article 6 of the Constitution in was that: “Conclusion: Some members of the Review Group see no need to change the text of this Article, considering that the words ‘under God’ are widely acceptable.

Others prefer that religious references generally should be reviewed by the Oireachtas in the context of amendment of the Preamble and other relevant parts of the Constitution.”

Given the number of non-religious citizens in the country Article 6 is not acceptable. In the 2011 Census 270,000 people ticked the No Religion box, up 45% from the last census. That’s 6% of the population, by far the second-largest single census category after Roman Catholic. Another 80,000 people either did not answer the question on religion (73,000), or else wrote either atheist or agnostic in the box titled Other Religion (7,000). That’s a total of 350,000 people who did not identify with any religion in the census. Some of those who did not answer the question might of course be religious, but did not want to answer the question. But the true figure for nonreligious people is likely to be much higher, based both on the reality of living in Ireland, and a leading census question that assumed that everyone had a religion and merely asked them what that religion was.

2.13 Despite the above and the European Convention on Human Rights Act 2004 there is no commitment from the Irish State to ensure that the non-religious are equal before the law without discrimination.

Recommendations:

- *Amend Article 44, on Religion, to explicitly give equal protection without discrimination to religious and non-religious philosophical believers.*
- *Amend Article 40.1 on equality before the law with the principle of non-discrimination.*
- *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).*

3. Article 7, 9 and 4 Freedom of Expression – Blasphemy

3.1 Part V of the Defamation Act 2009 establishes a criminal offence which includes a prohibition of publishing or uttering blasphemous matter. 9

3.2 In 2010 Ireland introduced a blasphemy law despite having informed the Venice Commission in 2007 that in general the legislation already in place provided adequately for these matters. 10 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.

3.3 The United Nations Human Rights Committee in their General Comment No. 34 stated that Blasphemy laws are incompatible with Article 19 of the Covenant. 11 Despite this Ireland introduced a Blasphemy law in a country where the non-religious are second class citizens and do not enjoy the right to equality before the law without discrimination.

3.4 *The following information on Blasphemy was written by Prof David Nash 12 of Oxford Brookes University for inclusion in Atheist Ireland’s submission to the Committee.*

- *Part V of the Defamation Act 2009 is a new law which defies almost all past precedent. It does not incorporate principles of English Common Law nor does it incorporate conventional hate crimes legislation. Therefore Ireland cannot claim margin of appreciation in seeking to maintain this law.*
- *Blasphemy law is a species of libel with no real rules of evidence or proof. Likewise it is an offence for which the Mens Rea assumptions of guilt are, and always have been very difficult to establish.*

- *An inclusive blasphemy law, which Ireland's law seeks to be, is inadequate for protecting religions in conflict with one another, or apostates from more established forms of religion.*
- *Blasphemy laws are arguably against Article 14 of the European Convention on Human Rights. This was recognised by the UK House of Lords Select Committee on Religious Offences (2003)*
- *The legal criterion for recognition as a religious group is problematic and poorly defined.*
- *It is not inconceivable that an extended blasphemy law potentially enshrines religious protection for the act of blasphemy and does not protect society from its ramifications*

Particular Problems with the Blasphemy Provisions of the Defamation Act of 2009:

1. Wording that is citing elements of degree to enact the offense.

- *Within the provisions of the law the blasphemous matter has to be 'grossly' abusive and there is no clear definition of when this level of abuse has been reached as opposed to 'mild' or 'minimal' abuse.*
- *This matter also has to cause 'outrage' which is again not clearly defined. Moreover the need for outrage is more likely to ensure this level of reaction is achieved from those so offended.*
- *The law requires a 'Substantial number' of adherents to be offended by blasphemous material. This number is not defined, neither is 'adherents'.*

2. Defences:

- *The attempt to establish legitimate defences again contain poorly defined concepts.*
- *The requirement that a 'Reasonable person' be offended is another conception lacking definition.*
- *The requirement to establish '... genuine literary, artistic, political, scientific or academic value' is also problematic. It is difficult to establish what these concepts are, even before we distinguish legally between 'genuine' manifestations and 'false' manifestations.*
- *The law is a class discriminatory law since it creates provisions whereby a skilled and educated debater stands far less chance of prosecution than a less educated individual in a non-academic context.*
- *Attempts to define 'religion' are clumsy at best. These seek to rule out 'cults' (again not positively defined) or organisations whose 'principle object of which is the making of profit' or 'employs oppressive psychological manipulation.' Court cases where these characteristics are mentioned in connection with established mainstream religions will cause great offence and prove similarly embarrassing for the Irish government.*
- *Such defences could easily be harnessed by unsavoury and objectionable religious and political views to enjoy the oxygen of publicity which could otherwise be denied to them.*

Conclusions

- *The Irish law of blasphemy is substantially unwanted (there was no demand for it before its introduction). It is poorly drafted and contains innumerable legal and procedural problems within it.*
- *Ireland's stance on the matter runs counter to what is occurring in other western countries and how its own actions no longer occur in isolation and convey signals to the rest of the world.*
- *This opinion is shared by the United Nations special Rapporteur on Freedom of Religion and Belief (Prof Heiner Beilefeldt).*

Professor David Nash (Oxford Brookes University)

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).***

4. Article 15, Article 7 and Article 4 – Religious Oaths

4.1 Under the Irish Constitution the President, judges and members of the Council of state are required to swear a religious oath. This is contrary to Article 15 and 4 of the Framework Convention.

4.2 Article 12 – Section 8 of the Irish Constitution requires the President on taking office to take a religious oath. There is no option of taking a declaration.

4.3 Article 31 Section 4 of the Irish Constitution requires Members of the Council of State to take a religious oath. There is no option of taking a declaration.

4.4 Article 34 – Section 5 of the Irish Constitution requires Judges on appointment to office to take a religious oath. There is no option of taking a declaration.

4.5 The above Articles in the Irish Constitution are incompatible with the obligations under Article 15, Article 7 and Article 4 of the Framework Convention.

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.***

5. Article 12, Article 7 and Article 4 – Education

5.1 Since the comments of the Advisory Committee in 2007 (para 98 and 99) nothing has changed on the ground for minorities in the Irish education system.

5.2 It is clear from the Government submissions to the UN and Council of Europe over the years that the Irish State inaccurately maintains that our education system protects the individual human rights of all when this is simply not the case. The State does not accept any responsibility for the protection of the human rights of all parents in the education system under the various Conventions that Ireland has ratified as they have ceded control of education to the interests of Patron bodies and Boards of Management. Irish schools are publicly funded but essentially private.

5.3 Irish schools are not considered 'organs of the state' within the meaning of the European Convention on Human Rights Act 2003. 13 Therefore the Irish courts are not obliged to interpret rights in a manner consistent with the European Convention or any judgement at the European Court of Human Rights. 14 It is impossible to access the human rights guaranteed

under the Framework Convention, the European Convention and the various UN Conventions.

5.4 The Irish State absolves itself of the responsibility to educate and delegates this responsibility to private bodies and institutions. In essence private bodies and institutions (the majority are religious bodies) have control over the practical application of the human rights of minorities in the Irish education system and are not accountable to the courts for those rights. The Irish State has ceded control of the education system to the interests of private bodies and institutions. 15 Human Rights in Irish schools are a theoretical illusion as no practical application is given to them on the ground.

5.5 Access to schools without religious discrimination

In Ireland over 90% of primary schools are private religious schools as under the Irish Constitution the state ‘provides for’ education as opposed to ‘provide education’. There is no parallel system of non-denominational state schools.

5.6 On 15th March at the UN under the Universal Periodic Review Ireland rejected a recommendation to eliminate religious discrimination in access to education. The State claimed that they were opening up more non-denominational schools in Ireland. As it stands now there are no non-denominational schools registered with the Dept of Education so it is difficult to understand how the State could be opening up more.

5.7 In Ireland the terms denominational, multi-denomination, inter-denominational and non-denominational are not legally defined and consequently some schools that operate a specific religious ethos are called multi-denominational. We have noticed recently that the Government is calling schools that are not under religious patronage non-denominational notwithstanding the fact that some of these schools are denominational in nature.

5.8 In order for religious schools to protect their Characteristic Spirit (ethos) the Irish State has put in place Section 7- 3 – (c) of the Equal Status Act 2000. 16 This means that schools can give priority to co-religionists in the event of a shortage of places in order to uphold their Characteristic Spirit (ethos). Religious schools now operate two admissions policies; one for co-religionists and a second one for minorities who have no choice but to seek access to religious schools as the majority of the schools in the country are Christian.

5.9 Section 7 – 3 (c) of the Equal Status Act 2000 denies the non-religious a guaranteed right of access without discrimination to over 90% of schools in the state. It is simply not an option for these parents to educate their children at home and they are left with a choice between a religious education for their children or no education at all. In areas where there is a shortage of places Section 7 – 3 (c) of the Equal Status 2000 causes children to be refused access to schools and coerces parents into getting their children Baptised into the Catholic religion in order to gain access to the local school. 17

5.10 The Irish State cannot fund schools for every religion and the non-religious in all areas of the country. Opening up a few more schools throughout the state will not guarantee the human rights of ALL parents and children in Ireland as minorities are scattered throughout the country. This policy is doomed to fail as there will always be families that have no choice but to send their children to schools that are controlled by private bodies and where there is no right to an effective remedy to vindicate their human rights in practice and in law.

5.11 The Irish State is pursuing a policy of segregating children according to the religious and philosophical convictions of their parents. At the same time they deny access to an effective remedy in practice and in law to vindicate basic human rights. This policy cannot be called pluralism. It is segregation on religious grounds which can only undermine respect, tolerance, social and community cohesion. Due to the intersectionality of racial and religious discrimination this policy means that certain schools have a very high profile of non-

nationals. In 2008 in Balbriggan, Co. Dublin this policy led to the establishment of a school for immigrants. 18

5.12 Religious Instruction and Religious Education (Characteristic Spirit)

The Irish Supreme Court recognises that a religious ethos influences children and that a school is not obliged to change its general atmosphere (Characteristic Spirit/ethos) in order to accommodate minorities. Section 15 – 2 (b) of the Education Act 1998 obliges Boards of Management in schools to uphold the Characteristic Spirit (ethos) of the Patron. Schools in Ireland are not obliged to write down in their admissions policies what their Characteristic spirit (ethos) is nor clearly define where they integrate it into the state curriculum. Neither are they obliged to deliver the curriculum in an objective, critical and pluralistic manner.

5.13 In their Report on Religion and Education: A Human Rights Perspective, the Irish Human Rights Commission refers to the comments of the Irish Supreme Court:-

“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 its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.” 19

5.14 Religious Instruction

The right to opt out of Religious Instruction is guaranteed under Article 44.2.4 of the Irish Constitution. This is reflected in Section 30 – 2 (e) of the Education Act 1998 which states that the Minister:

“shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.”

5.15 Rule 69 – 2 (a) of the Rules for National Schools 20 says that no pupil should receive or be present at any religious instruction of which his parents disapprove. The State does not fund the supervision of children that are opted out. Parents are responsible for the supervision of their children if they opt them out of religion.

5.16 The Constitutional right to opt out in Irish schools has not been interpreted to mean the physical removal of students from religious instruction, prayers, preparation for Holy Communion, Confirmation, Religious ceremonies (Mass etc). The Education Act 1998 does not oblige schools to inform parents that their children will be obliged to attend prayers and religious ceremonies as well as be present in the class where religious instruction takes place. Consequently children, who have opted out, attend prayers and Religious services without their parents’ knowledge. 21

The heavy burden placed on parents by the failure to legally oblige schools to supervise children or to provide an alternative subject has rendered the right to opt out inoperable in practice. Parents are deterred from even exercising the right to opt out because of the burden it will create for them. It is impossible to ensure that the teaching of their children is in conformity with their philosophical convictions.

5.17 Religious Education

The Religious Education that the Irish Supreme Court referred to (as opposed to Religious instruction) is provided by each Patron body and integrated into the curriculum and the daily life of the school. It is impossible to opt out of this Religious Education and the Supreme Court does not recognise it as Religious instruction as such. The limited Constitution protection only applies to formal religious instruction classes. In their Concluding Observations in 2008 the UN Human Rights Committee stated the following:-

- *“22. The Committee notes with concern that the vast majority of Ireland’s primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus depriving many parents and children who so wish to have access to secular primary education. Articles 2 (Discrimination), 18 (Freedom of Conscience), 24 (the Rights of the Child), 26 (Equality before the Law).”*
- *The State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.” 22*

5.18 In a Submission to the Forum on Patronage and Pluralism the Irish Catholic Bishops refer to this Religious education:

“It became clear at the forum sessions in June that all Patrons want to provide some form of programme with regard to religion and ethics. Such a programme could take a phenomenological approach as happens in many secular schools across Europe where children are introduced to religions as one datum among many others. The phenomenological approach is useful but it is very limited from a faith-based perspective. It amounts to education about religions and beliefs rather than education into and from religious faith.

“In Catholic primary schools we have a curriculum in Religious Education which is currently undergoing review. Care needs to be taken not to equate Religious Education with Religious Instruction. Religious Education in Catholic schools has been carefully crafted pedagogically over several decades in response to a changing society. It includes strands of faith formation and religious instruction as part of an overall introduction to a spiritual and moral world opened up in a child friendly way. It should also be noted that Religious Education is a recognised discipline at third-level where programmes have been accredited by Irish universities and other relevant bodies.

“The integrated curriculum and the Religious Education programme must give expression to the characteristic spirit of the school.”

5.19 It is clear that the Catholic Religious Education that is integrated into the curriculum in schools has elements of faith formation and its purpose is to influence children into a religious way of life. It presupposes that children could learn about Christianity and the Catholic faith in detail and not objectively without being subjected mentally to what constitutes or might constitute unwanted influence or indoctrination. Minorities cannot exercise their human right to opt out of this religious education and so cannot ensure that the teaching of their children is in conformity with their convictions. This religious education is not based on the Toledo Guiding Principles as the Holy See has rejected these principles. Article II of Protocol 1 of the European Convention does not permit a distinction to be drawn between “religious instruction and other subjects”; it requires the State to respect parents’ convictions, throughout the entire State education programme.

The Holy See stated that:

“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.” 23

5.20 Moral Education

It is worth mentioning here that Article 42.3.2 of the Irish Constitution says 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.” This Article does not refer to religion so the religious education that is integrated into the state curriculum

is not the basic moral education referred to under Article 42.3.2. In Irish schools secular parents do not have access to a basic moral education under Article 42.3.2 of the Constitution for their children. Their children are influenced and indoctrinated into a spiritual and moral world according to a particular religious belief. It has to be a moral education based on religious belief or no moral education at all.

5.21 What the Irish State does is to absolve itself of the Constitutional obligation to ensure children receive a certain minimum moral education and delegate that obligation to private bodies and institutions. These bodies can then legally interpret this moral education in accordance with their religious beliefs and are not obliged to comply with the decisions and general principles of the European Court of Human Rights.

5.22 The Education Act 1998 reads as follows:

“9 – A recognised school shall provide education to students which is appropriate to their abilities and needs and, without prejudice to the generality of the foregoing, it shall use its available resources to – (d) promote the moral, spiritual, social and person development of students and provide health education for the, in consultation with their parents, having regard to the characteristic spirit of the schools.” 24

5.23 The Primary School Curriculum 1999 reads as follows:

“The Spiritual Dimension: The curriculum takes cognisance of the affective, aesthetic, spiritual, moral and religious dimensions of the child’s experience and development. For most people in Ireland, the totality of the human condition cannot be understood or explained merely in terms of physical and social experience. This conviction comes from a shared perception that intimates a more profound explanation of being, from an awareness of the finiteness of life and from the sublime fulfilment that human existence sometimes affords. The spiritual dimension of life expresses itself in a search for truth and in the quest for a transcendent element within human experience. The importance that the curriculum attributes to the child’s spiritual development is expressed through the breadth of learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum, and through the child’s engagement with the aesthetic and affective domains of learning.” 25

5.24 Objective, Critical and Pluralistic

Under the European Convention on Human Rights the State is obliged to take sufficient care that the information and knowledge conveyed in the curriculum is delivered in an objective, critical and pluralistic manner with the aim of enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism. As it stands, now the Irish State takes no care to ensure that the curriculum is delivered in an objective, critical and pluralistic manner because they do not respect the philosophical convictions of secular parents. Respect for the philosophical convictions of secular parents under the European Convention is an absolute right and not one that can be balanced against the rights of others.

5.25 It is clear from the Supreme Court that the Irish Constitution does not protect minorities from unwanted influence and indoctrination if they choose to send their children to schools that integrate religion in all subjects. Of course the point is that minorities are coerced into sending their children to local schools that operate a religious education programme that is not objective. If a religious school is the only school in a given area what else are parents to do?

5.26 The Irish Constitution is incompatible with Ireland’s international obligations as it does not respect the secular viewpoint.

The Constitutional Review Group Report 1995 stated that: “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” 26

Article 42.3.1 of the Irish Constitution states that “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.”

5.27 The Irish State does not recognise that secular parents have a conscience so they ignore Article 42.3.1 of the Irish Constitution. Despite this Constitutional guarantee parents in Ireland that seek secular education for their children have no choice but to send their children to religious schools. Here they cannot ensure that the teaching of their children is in conformity with their philosophical convictions. These schools violate their conscience and lawful preference.

5.28 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.

5.29 At second-level the Religious Education course introduced by the State disrespects the philosophical convictions of non-religious parents. Schools are permitted to interpret this course according to their Characteristic spirit (ethos) and consequently the course is not delivered in an objective, critical and pluralistic manner. In schools with a Catholic ethos this course is combined with the Guidelines for the Formation and Development of Catholic students. Atheists and Humanists are mentioned in the course alongside materialism and fundamentalism.

5.30 New VEC Community Schools

In their Report (ACFC/SR/III(2011)004) the State refers to the New VEC Community Schools (page 51). The Irish State has already informed the UN that these schools are Interdenominational not non-denominational. Minorities are still responsible for the supervision of their children if they opt them out of religious formation and ceremonies.

5.31 The Dept of Education has confirmed that the education for Catholic children in these schools will be on a denominational basis and exactly the same as they received in denominational schools. 27

5.32 There is no legal guarantee that the curriculum will be delivered in an objective, critical and pluralistic manner for secular parents. In a Submission to the Forum on Patronage and Pluralism the Principals of these VEC schools state “that the separation of one subject in the curriculum – religious education – from all others, allocating it to the beginning or end of the school day is, we believe, educationally and philosophically suspect in the context of primary education.” 28

5.33 The Government claims that these New VEC Schools respect all religions and none.

This simply is not the case as the above statement does not recognise and respect the philosophical convictions of those parents that seek secular education for their children. The European Court of Human Rights has said that the secular viewpoint is worthy of respect in a democratic society, and must be regarded as a “philosophical conviction” within the meaning of the Convention. 29 These schools believe that the convictions of secular parents are philosophically suspect. That does not constitute respect under Article II of Protocol 1 of the

European Convention and consequently secular parents cannot ensure that the teaching of their children is in conformity with their convictions.

5.34 These schools intend to identify and segregate children according to the religious and philosophical convictions of their parents. No change in legislation is envisaged and as in the rest of the school system there is no access to an effective remedy to vindicate the human rights of secular parents.

5.35 Forum on Patronage and Pluralism

In the State Report (para 161 page 51) the Government refer to the Forum on Patronage and Pluralism. The Interim Report from the Forum was issued on the 17th of Nov 2011. 30 Unfortunately this Report will not change anything on the ground for minorities as it did not deal with the failings of the Irish Constitution. It speaks about introducing protocols and non-statutory guidelines when secular parents want access to their human rights in practice and in law. Please see Atheist Ireland's response to this Report as it sets out clearly all the issues in relation to human rights. 31

5.36 Teacher Training

Parents who seek secular education for their children have no option but to send their children to schools that have a legal right to discriminate against teachers and not only on religious grounds. This discrimination undermines the dignity of the human person and consequently children are educated in an environment that is in direct conflict with the philosophical convictions of their parents.

5.37 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. The Bishops of Dublin and Limerick have a veto over some public service jobs in the colleges (that have nothing to do with teaching religion e.g. senior positions, president etc) and also have an automatic block vote on the Board of Governors. Churches are excused from Freedom of Information legislation so do not have to offer any explanations. 32

5.38 There are five teacher-training colleges in Ireland and all of them are Christian.

Minorities simply have no choice but to attend one of the colleges if they wish to become a teacher. Section 37 of the Employment Equality Act provides for an exemption from equality for religious, educational or medical institutions under the control of a religious body. The exemption permits a religious body to discriminate on grounds of religion regarding its employees and prospective employees. This legislation permits religious bodies to take any action which is "reasonably necessary" to prevent an employee from undermining its ethos. This part of the Act is wide-ranging and not limited to discrimination on the grounds of religion. This part of the Act can be applied to a teacher who does not conduct his/her private life in accordance with the teaching of a particular religion.

5.39 None of the Teacher training colleges are obliged to teach student teachers to convey the curriculum in an objective, critical and pluralistic manner. In the Dail recently the Minister for Education stated that:-

"In relation to the primary school curriculum, while religion is recognised as a curricular area, the content of the religious curriculum is a matter for the patron of each school. As the Deputy is aware, the vast majority of primary schools in Ireland have religious patronage, and this is reflected in the course content and teaching practice placements provided in programmes of primary initial teacher education. The aim of these programmes is to provide the school system with an adequate number of teachers who have the necessary qualifications, skills and knowledge to teach the prescribed curriculum in all settings. All teacher education programmes in Ireland that lead to registration must have current professional accreditation, which is the statutory responsibility of the Teaching Council.

Professional accreditation is a judgement as to whether a programme prepares one for entry into the profession. In accordance with Section 38 of the Teaching Council Act 2001, the Council is empowered to review and professionally accredit programmes of initial teacher education and procedures are in place for this purpose.” 33

5.40 Section 40 of the Teaching Act 2001 34 obliges the Teaching Council to ensure that the requirement relating to teacher education and training for the purposes of qualification as a teacher satisfy the minimum standards specific in any directive, regulation or other act adopted by an institution of the European Communities or in any judgement of the European Court of Justice. There is no European Union Directive that protects against religious discrimination. Schools in Ireland are publicly funded but essentially private and have an opt out from the EU Equality Employment Directive. This section of the Teaching Council Act 2001 does not oblige the Teaching Council to ensure that teacher education and training complies with the states obligations under the European Convention and the Framework Convention for the protection of National Minorities.

Recommendations

- ***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 is 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.***
- ***Amend Section 40 of the Teaching Council Act 2001 to ensure that teacher education and training complies with Ireland’s obligations under the European Convention and the Framework Convention for the Protection of National Minorities***

6. Constitutional Convention

6.1 The Government has announced a Constitutional convention for Ireland. It has been announced that the initial issues that this Convention will deal with are as follows:

Review of the Dail electoral system

Giving citizens the right to vote at Irish embassies in Presidential elections

Provision for same-sex marriage

Amending the clause on the role of women in the home and encouraging greater participation of women in public life.

Increasing the participation of women in politics.

Removing blasphemy from our Constitution.

6.2 The Government does not intend to include civil society in the Constitutional Convention. At this stage it is unclear what, if any, subsequent topics will be selected for this Convention. What is clear is that the Irish State is not rushing to ensure that the basic human right to

equality and non discrimination is enshrined in the Irish Constitution. The Constitutional Review Group Report in 1995 recommended change in Article 40.1 to bring it into line with our international obligations but it seems that this basic human right will not be on the agenda of the Constitution Convention. The Irish State will continue to discriminate against the non-religious and treat us as second class citizens.

7. Conclusion

7.1 In Ireland equality before the law and equal protection of the law without religious discrimination is not guaranteed to the non-religious. The Irish Constitution does not protect the non-religious from discrimination on the grounds of religion. This religious discrimination has undermined the basic right to freedom of conscience for the non-religious in Ireland.

7.2 Ireland has failed to take measures to secure the human rights of the non-religious despite having agreed to guarantee human rights to all within its territory. It is clear that the Irish Constitution is incompatible with the human rights guaranteed under the Framework Convention for the Protection of National Minorities and the rights guaranteed under the European Convention on Human Rights and Fundamental Freedoms. Human rights in Ireland are a theoretical illusion and not realizable in practice as the state is not committed to taking measures to ensure that these basic human rights are enjoyed by all.

Notes

1 A,B and C v Ireland (app No 25579/05) 16th Dec 2010. Extract : 150. “ The rights guaranteed by the 2003 Act would not prevail over the provisions of the Constitution (paragraphs 92-94 above). In any event, a declaration of incompatibility would place no legal obligation on the State to amend domestic law and, since it would not be binding on the parties to the relevant proceedings, it could not form the basis of an obligatory award of monetary compensation. In such circumstances, and given the relatively small number of declarations to date (paragraph 139 above) only one of which has recently become final, a request for such a declaration and for an ex gratia award of damages would not have provided an effective remedy to the first and second applicants (Hobbs v. the United Kingdom (dec.), no. 63684/00, 18 June 2002; and Burden v. The United Kingdom [GC], cited above, §§ 40-44).”

2 E/C. 12/1/Add.77 – 5th June 2002, para 16.

3 <http://www.ihrc.ie/publications/list/ihrc-report-to-un-universal-periodic-review-march/>

4 <http://www.constitution.ie/reports/crg.pdf> p.236 Articles 40 -44, page 240

5 <http://www.tcd.ie/Law/gerrywhyte/>

6 <http://www.law.emory.edu/fileadmin/journals/eilr/21/21.1/Whyte.pdf>

7 <http://www.constitution.ie/reports/crg.pdf>

8 <http://www.law.emory.edu/fileadmin/journals/eilr/21/21.1/Whyte.pdf>

9 <http://www.irishstatutebook.ie/2009/en/act/pub/0031/index.html>

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

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

12 <http://www.history.brookes.ac.uk/staff/prof.asp?ID=585>

13 <http://www.irishstatutebook.ie/2003/en/act/pub/0020/index.html>

14 Mawhinney, Freedom of Religion in the Irish Primary school system: A failure to protect Human Rights? P.39

“In the absence of constitutional and education legislative provisions guaranteeing freedom of thought, conscience and religion in the context of the integrated curriculum, it might be presumed that the recent European Convention on Human Rights Act 2003 (ECHR) could be employed to offer protection for such a Convention right. 77 However, constitutional jurisprudence and recent disputes involving matters of ethos in schools suggest that this

protection may not be forthcoming. First, the provisions of the Act are subject to the overriding authority of the Constitution, which remains the supreme law of the country. To date, denominational school bodies have been excluded from certain rights obligations found in the Constitution when the courts have considered it ‘necessary to make distinctions in order to give life and reality to the constitutional guarantee of the free profession and practice of religion’.⁷⁸ For instance, in *McGrath and O’Ruairc v Trustees of Maynooth College*,⁷⁹ it was held that the prohibition of discrimination under Art 44.2.3 of the Constitution was confined to the state and not extended to institutions receiving public funding. The autonomy of religious bodies is additionally safeguarded by Art 44.2.5 of the Constitution, which protects the right of denominations to control their own affairs, including the running of educational establishments and the enforcement of its own regulations.⁸⁰ A second reason to doubt the capacity of the ECHRA to protect the rights of minority-belief individuals in denominational schools lies in the applicability provision of the Act. The Act is applicable only to those bodies defined as ‘organs of the state’.⁸¹ As yet, the courts have not been asked to consider this definition. For present purposes, the question arises as to whether privately owned and managed, state funded, denominational schools would be classified as ‘organs of the state’. In its initial report to the Economic, Social and Cultural Committee in 1997, the government stated that ‘Overall responsibility for education in Ireland lies with the Minister for Education who is a member of the Irish Government and responsible to the National Parliament’.”

15 *Manoussakis v. Greece* (ECHR, app 18748/91 1996) para 49-38.

16 <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>

17 CERD/C/IRL/CO/3-4 10th March 2011 para 26.

18 <http://www.guardian.co.uk/world/2007/sep/25/schools.internationaleducationnews>

19 <http://www.ihrc.ie/download/pdf/religionandeducationpdf.pdf> page 72

20 http://www.education.ie/servlet/blobServlet/rules_for_national_schools_7_13.pdf

21 <http://www.independent.ie/national-news/irate-dad-takes-son-out-of-school-over-prayer-recital-2512766.html>

22 [http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/49/PDF/G0843349.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G08/433/49/PDF/G0843349.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/49/PDF/G0843349.pdf?OpenElement)

23 <http://www.osce.org/pc/28557>

24 <http://www.irishstatutebook.ie/1998/en/act/pub/0051/sec0009.html#sec9>

25 http://www.ncca.ie/uploadedfiles/Curriculum/Intro_Eng.pdf Page 27

26 <http://www.constitution.ie/reports/crg.pdf> page 366

27 <http://www.independent.ie/lifestyle/education/latest-news/new-schools-to-give-communion-lessons-during-classtimes-1537124.html>

28

http://www.education.ie/admin/servlet/blobServlet/fpp_comm_ns_principals_17nov2011.pdf?language=EN&igstat=true

29 *Lautsi v Italy* (App No. 30814/06) 18th March 2011 – Extract “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. “

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http://www.education.ie/servlet/blobServlet/fpp_prof_coolahan_address_november_2011.pdf?language=EN

31 <http://www.teachdontpreach.ie/2011/12/atheist-ireland-response-to-interim-report-of-forum-on-patronage-and-pluralism/>

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

33 <http://www.teachdontpreach.ie/2012/03/hibernia-college-dail-question-from-clare-daly-td/>

34 <http://www.irishstatutebook.ie/2001/en/act/pub/0008/sec0040.html#sec40>