

# **A Secular State Protects Human Rights**



**Submission from Atheist Ireland  
to UN Human Rights Committee  
re Ireland and the ICCPR**

**August 2020**

## Contents

1. Introduction to Atheist Ireland	3
2. Recommended questions	3
3. Article 2, Article 26 — Charities Act and Tax Law	5
4. Article 2, Article 26 — Civil Registration Amendment Act 2012	6
5. Article 2, Article 18 Article 25, Article 26 — Employment Equality Act 1998	7
6. Article 2, Article 18, Article 26 — Access to non-denominational schools	9
7. Article 2, Article 18 — Post Primary School Transport scheme	10
8. Article 2, Article 18 — The right to not attend religious instruction classes	13
9. Article 2, Article 18, Article 26 — Neutral studying environment in schools	15
10. Article 2, Article 18, Article 26 — Religious Oaths in the Constitution	15
11. Article 2, Article 18, Article 13 — Freedom of Belief when Seeking Asylum	16

## 1. Introduction to Atheist Ireland

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 discriminate against or support or finance or give special treatment to any religion or belief.

Atheists are a minority in Ireland. These are the last census figures in 2016 under the category for Religion states (figures in thousands): Roman Catholic 3,729.1 - Church of Ireland 126.4 - Muslim (Islamic) 63.4 - Orthodox 62.2 - Christian 37.4 - Presbyterian 24.2 - Hindu 14.3 - Apostolic or Pentecostal 13.4 - Other 97.7 - No religion 468.4 - Not stated 125.3.

Since being formed in late 2008, we have campaigned for a secular human rights based Irish Constitution, parliament, laws, and government, with particular emphasis on our education system which discriminates systemically on the ground of religion. We are part of the dialogue process between the Government and religious and nonreligious philosophical bodies.

We led a successful decade-long campaign to remove the crime of blasphemy from the Irish Constitution. The 37th Amendment to the Constitution Bill was brought to Dáil Éireann and the Irish public passed the amendment in a referendum in 2018. The Blasphemy (Abolition of Offences and Related Matters) Act was passed in 2019.

We base our policies on human rights standards. We have addressed the United Nations Human Rights Council and we take part in sessions of various UN Committees. We have successfully had human rights based recommendations made based on our submissions to these committees. We have also made submissions to the OSCE and the Council of Europe.

## 2. Recommended questions

### 3. Article 2, Article 26 – Charities Act and Tax Law

Will the state party amend the Charities Act under the ‘religion’ category to ‘religions and beliefs/philosophical convictions,’ and insert another category to ‘promote human rights’?

### 4. Article 2, Article 26 – Civil Registration Amendment Act 2012

Will the State Party amend the Civil Registration Amendment Act 2012 to remove the discriminatory requirements for secular bodies?

### 5. Article 2, Article 18 Article 25, Article 26 – Employment Equality Act 1998

Will the State party remove Section 37 of the Employment Equality Act so that minorities can train and gain employment as teachers without being legally obliged to uphold a specific religious ethos and teach religious instruction?

### 6. Article 2, Article 18, Article 26 – Access to non-denominational schools

Will the State commit to ensure that every child has the right to access a local publicly funded school without religious discrimination or being threatened with refusal of access if they don't uphold the schools ethos?

Will the State clearly define the terms, denominational, multi-denominational, interdenominational, non denominational or other, and commit to legally defining those terms, as per the Recommendation of the Irish Human Rights & Equality Commission in their Report ‘Religion & Education; A human Rights Perspective’?

Will the State establish non-denominational schools at primary and second level?

7. Article 2, Article 18 — Post Primary School Transport scheme

Will the State Party commit to extending the school transport scheme so that non religious families can access Educate Together schools?

8. Article 2, Article 18 — The right to not attend religious instruction classes

Why are there no State Guidelines on the Constitutional right to not attend religious instruction and will the State give a commitment to putting in place Guidelines to support the right to not attend religious instruction?

Why are students who do not attend religious instruction, in accordance with their right, not offered another subject and will the State party give a commitment to ensure that students who do not attend religious instruction are offered another curriculum subject?

9. Article 2, Article 18, Article 26 — Neutral studying environment in schools

Does the State believe or not that it is required to ensure a neutral studying environment in publicly funded schools, outside the confines of religious instruction classes?

Will the State Party provide guidelines to schools regarding Characteristic spirit (ethos) to ensure that the rights of minorities to freedom of conscience and respect for their convictions is guaranteed?

Will the state party guarantee that all students have access to objective Relationship and Sexuality Education at primary level and Social, Personal and Health Education at second level?

10. Article 2, Article 18, Article 26 — Religious Oaths in the Constitution

Will the State party commit to holding a referendum to remove religious oaths from the Constitution and replace them with a single declaration that does not reveal the religious or nonreligious beliefs of the person making it?

11. Article 2, Article 18, Article 13 — Freedom of belief when seeking Asylum

Will the State respect the right of asylum seekers to self determination on the basis of religion or belief?

Will the State ensure that asylum seekers have access to welfare and housing support as the Direct Provision centres are not suitable places for those fleeing persecution?

### 3. Article 2, Article 26 – Charities Act and Tax Law

**Question: Will the state party amend the Charities Act under the ‘religion’ category to ‘religions and beliefs/philosophical convictions,’ and insert another category to ‘promote human rights’?**

Article 40.1 of the Irish Constitution states that:

“All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

The Irish Charities Act and tax law discriminates against minorities with non religious philosophical convictions, by giving financial privileges to religious bodies only. For example, the advancement of religion is considered a charitable purpose, but the advancement of atheism is not.

The Charities Act 2009 states that: <sup>1</sup>

“3 (1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:  
(a) the prevention or relief of poverty or economic hardship;  
(b) the advancement of education;  
(c) the advancement of religion;  
(d) any other purpose that is of benefit to the community.”

Religious bodies are not taxed even on income that is not raised or used for genuine charitable purposes but for political purposes such as campaigning to maintain the ban on abortion.

The Irish Constitution and many of our laws are religiously inspired. Religious bodies can get any amount of donations for religious purposes, from inside and outside the country and use those funds to campaign politically.

The Guidance from the Charities Regulator regarding Charities campaigning politically state: <sup>2</sup>

“The Charities Regulator recognises that engaging in activities to promote a political cause that is of direct relevance to the charitable purpose of a charity, can be an important means by which a charity can achieve its charitable purpose.

Such activities may include supporting the adoption of particular policies, seeking to influence central and local government and campaigning for the purpose of advocating changes to a law or policy.”

Organisations such as Atheist Ireland who cannot register as a charity must comply with the Electoral Act 1997, <sup>3</sup>which regulates political financing, including political donations and election expenses, on the funding of political donations from inside and outside the country.

This discriminates against non religious bodies that promote atheism, humanism, secularism and human rights as it means that religious bodies have access to unlimited charitable donations from inside and outside Ireland to campaign politically to ensure that our Constitution, laws and policy reflect their religious aims and mission.

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<sup>1</sup> <http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/print.html>

<sup>2</sup> <https://www.charitiesregulator.ie/media/1337/guidance-on-charities-and-the-promotion-of-political-causes-english.pdf>

<sup>3</sup> <http://www.irishstatutebook.ie/eli/1997/act/25/enacted/en/html>

There is no reason for this discriminatory treatment. It seems that the Irish State has just decided that this discrimination is warranted on moral or social grounds without any proportionality test being applied.

#### **4. Article 2, Article 26 – Civil Registration Amendment Act 2012**

**Question: Will the State Party amend the Civil Registration Amendment Act 2012 to remove the discriminatory requirements for secular bodies?**

The Civil Registration Amendment Act 2012 <sup>4</sup> is the most overtly discriminatory law that has been passed in Ireland since Atheist Ireland was founded. For arbitrary reasons, it applies different legal standards for religious and secular groups who can solemnise marriages.

Among these different legal standards are that a secular group that solemnises marriages must be a charity, must be established for five years, must have a minimum number of members, must be ethical, and may not promote a political cause.

These restrictions do not apply to religious groups that want to solemnise marriages. This places religious groups at a particular advantage over secular groups in the public sphere. In particular, despite the Catholic Church's record on child abuse and its cover-up, it is not required to be ethical but secular groups are.

Along with the Charities Act the Civil Registration Amendment Act 2012 puts secular bodies at a particular disadvantage with regard to promoting a political cause as they cannot campaign politically to amend the elements of our Constitution and laws that are religiously inspired if they want to solemnise marriages.

The Act also discriminates between different secular bodies, creating a three-level hierarchy of religious discrimination. This is because the original Bill was intended to facilitate specifically the Humanist Association of Ireland, rather than secular bodies generally.

The State claims that this discrimination has a legitimate aim, which is to ensure that the institution of marriage is protected, so we have tried to find out if there a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

What we have found is that the State has just brought in a new law that directly discriminates against the non-religious and undermines our human rights without any ratio of proportionality to its stated aim of protecting marriage. We used the FOI Act to try and get access to documentation that would outline a proportionality test that resulted in the discrimination. There were no documents available.

#### **5. Article 2, Article 18 Article 25, Article 26 – Employment Equality Act 1998**

**Question: Will the State party remove Section 37 of the Employment Equality Act so that minorities can train and gain employment as teachers without being legally obliged to uphold a specific religious ethos and teach religious instruction?**

Section 37 (1) of the Employment Equality Act 1998 <sup>5</sup> gives a religious, educational or medical institution that is 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 permission to discriminate on religious grounds.

In order to train as a teacher and gain employment trainee teachers must take a Certificate in Religious studies (CRS). As the vast majority of schools in the state are religious it is nearly impossible to gain employment as a teacher without a CRS at primary level.

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<sup>4</sup> <http://www.irishstatutebook.ie/eli/2012/act/48/enacted/en/print.html>

<sup>5</sup> <http://www.irishstatutebook.ie/eli/1998/act/21/enacted/en/html>

This was the subject of an article in the Irish Times on 29th of April 2014, “Trainee teachers are warned career prospects depend on religious faith.”<sup>6</sup>

At second level the vast majority of schools have a religious ethos, this includes Education & Training Board schools which are classed as either interdenominational or multi-denominational as well as schools under the patronage of religious bodies.

In a case in 2017 the Workplace Relations Commission stated that a particular Education & Training Board school (multi denominational) which has no agreement with the Catholic Church can have a particular religious ethos because it has a history of having a Christian ethos.

The WRC stated that:<sup>7</sup>

“It is clear that the Respondent has an established Christian ethos and it adduced evidence that the placement of the May altar is a long standing tradition which it practices every year in keeping with this ethos. This practice is in keeping with the Respondent’s Christian ethos. I am satisfied that the CTI has a Christian ethos and the teaching of religious education is a fundamental component of the curriculum in the school.

The Christian ethos of the school is clearly outlined in the CTI’s Religious Education Policy.”

The Central Technical Institute in Tipperary is described on the Department of Education’s website as multi-denominational but regardless their specific religious ethos is part of how they operate on the ground. Teachers are then legally required to uphold the christian ethos of schools that are categorised as multi-denominational.

The state supports this discrimination as the Constitution permits religious discrimination in order to buttress religion. Teachers would fall foul of Section 37 if they refused to uphold the religious ethos of the vast majority of schools at primary and second level. This puts minorities at a particular disadvantage as they have difficulty gaining employment as a teacher without being obliged by law to uphold a particular religious ethos.

## **6. Article 2, Article 18, Article 26 – Access to non-denominational schools**

**Questions: Will the State commit to ensure that every child has the right to access a local publicly funded school without religious discrimination or being threatened with refusal of access if they don’t uphold the schools ethos?**

**Will the State clearly define the terms, denominational, multi-denominational, interdenominational, non denominational or other, and commit to legally defining those terms, as per the Recommendation of the Irish Human Rights & Equality Commission in their Report ‘Religion & Education; A human Rights Perspective’?**

**Will the State establish non-denominational schools at primary and second level?**

There are no publicly funded non-denominational schools in Ireland. Despite the Committee’s Recommendation in the last round no non-denominational schools have been established. The majority of schools in Ireland are publicly funded private schools.

The terms denominational, interdenominational or multi-denominational are not legally defined in Ireland and mean different things to different Patron bodies and the State. That has consequences for the questions asked by the Committee as many multi-denominational schools and interdenominational schools operate as Catholic schools with Catholic practices and ethos.

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<sup>6</sup> <https://www.irishtimes.com/news/education/trainee-teachers-are-warned-career-prospects-depend-on-religious-faith-1.1776620>

<sup>7</sup> <https://www.workplacerelations.ie/en/cases/2017/july/dec-e2017-057.html>

Publicly funded schools are categorised as follows on the Department of Education's website. you will note that there are no non-denominational schools registered:

#### Primary Schools <sup>8</sup>

Mainstream — 2760 Catholic - 172 Church of Ireland - 133 MultiDenominational - 17 InterDenominational - 16 Presbyterian - 2 Muslim - 1 Jewish - 1 Methodist - 1 Quaker - 3 Other/unknown  
Special — 106 Catholic - 17 MultiDenominational - 1 InterDenominational - 9 Other/Unknown

#### Second Level Schools <sup>9</sup>

344 Catholic - 202 MultiDenominational - 150 InterDenominational - 22 Church of Ireland - 2 Quaker - 1 Jewish - 1 Methodist - 1 Presbyterian

Opening up more multi-denominational schools will not necessarily help minorities as many of these schools operate in practice as Catholic schools while claiming that they have a Christian ethos.

Recent research commissioned by the umbrella body for Education & Training Board schools (ETBs) presents a bleak picture on ETB schools and religion. Education and Training Board schools operate in the category multi-denominational and interdenominational and are presented as the alternative to denominational schools and are regarded as public schools.

The research called is called 'That's how it works here: The place of religion in publicly managed second level schools in Ireland.' <sup>10</sup> It states that:

"The religious dimension was always Catholic in nature. Bar a few exceptions, the role of religion within the life of the school remained largely unquestioned by school personnel. The article explores the findings in light of the legislative and historical contexts"

In their Report from 2011 'Religion and Education; A Human Rights Perspective,' <sup>11</sup> the Irish Human Rights and Equality Commission stated in relation to some Education & Training Boards schools that are regarded as interdenominational or multi-denominational:

"Although these schools were not intended to be denominational in the traditional sense, in practice, due to the manner in which they were established, and governed, they are.

The Commission recommended that:

"Terms such as, denominational, multi-denominational, inter-denominational, nondenominational or other school should be clearly defined in primary legislation, Ministerial regulations, or be determined by reference to the recognition of such schools under the Education Act."

The new Education (Admissions to Schools) Act 1998 <sup>12</sup> has meant that for minorities, the majority of schools at primary level cannot discriminate on the grounds of religion by giving preference to children from Catholic families. The removal of this religious discrimination is welcomed and it is an area where we have sought change for some time.

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<sup>8</sup> <https://www.education.ie/en/Publications/Statistics/Data-on-Individual-Schools/primary/>

<sup>9</sup> <https://www.education.ie/en/Publications/Statistics/Data-on-Individual-Schools/post-primary/>

<sup>10</sup> <https://bera-journals.onlinelibrary.wiley.com/doi/abs/10.1002/berj.3490>

<sup>11</sup> <https://www.ihrec.ie/documents/religion-and-education-a-human-rights-perspective/>

<sup>12</sup> <http://www.irishstatutebook.ie/eli/2018/act/14/enacted/en/html>

The Act only applies to primary schools and not second level schools.

It does not apply to Minority faith schools at primary level. These schools can still give preference to children that support their ethos and their religious education classes.

Over half of second level schools are under religious patronage and operate with a religious ethos, they can and do give preference to co-religionists.

All Schools at primary and second can still legally refuse access to a child if the child challenges their religious ethos. The Act states that:

“11. The Equal Status Act 2000 is amended  
(ii) by the insertion of the following paragraphs after paragraph (c):  
(ca) where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it refuses to admit as a student a person who is not of a particular religious denomination and it is proved that the refusal is essential to maintain the ethos of the school,”

In the debate on this Section of the Act the then Minister for Education, Richard Bruton stated: <sup>13</sup>

“This is a very high bar, and to my knowledge it has never been used. It would only be possible to invoke it if it was proven that an individual student was hostile to the ethos of a particular school.”

Despite the fact that this part of the Act has never been used schools still put it in their Admission policies. Parents and children from minority backgrounds see their right to education as based on not being hostile to the dominant religious belief system in their community.

Many parents have objections to the grounds of conscience to the dominant belief system and the privilege that it attracts from the state and must pretend to support it to gain access for their child to the local publicly funded school.

## **7. Article 2, Article 18 – Post Primary School Transport scheme**

**Question: Will the State Party commit to extending the school transport scheme so that non religious families can access Educate Together schools?**

The post primary school transport scheme <sup>14</sup> is confined to supporting students who, for reasons of their religious ethos, choose to attend their nearest minority religion denominational school.

It is the policy of the Department of Education to only support students from minority religious backgrounds who wish to attend the following schools. There are 22 Church of Ireland schools, 2 Quaker schools, 1 Jewish school, 1 Methodist school, and 1 Presbyterian school.

The scheme does not apply to non religious minorities who would choose to attend an Educate Together post primary school. There are now 17 Educate Together second level schools in the country and they are seen as the best option by non religious families on the grounds of conscience. Denominational schools and the majority of ETB multi-denominational and interdenominational schools operate with a religious ethos and many atheist and humanist parents object to them on the grounds of conscience.

The Department of Education states that:

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<sup>13</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2018-05-30/33/>

<sup>14</sup> <https://www.gov.ie/en/service/school-transport/>

“The Post-primary school transport scheme supports the transport to and from school of children who live more than 4.8 kilometres from and are attending their nearest post-primary education centre/school, subject to the following limited exceptions relating to ethos and language: Children who, for reasons of their religious ethos, choose to attend their nearest minority religion denominational school may be eligible for school transport to that school, even if it is not their nearest school.”

## **8. Article 2, Article 18 – The right to not attend religious instruction classes**

**Questions: Why are there no State Guidelines on the Constitutional right to not attend religious instruction and will the State give a commitment to putting in place Guidelines to support the right to not attend religious instruction?**

**Why are students who do not attend religious instruction, in accordance with their right, not offered another subject and will the State party give a commitment to ensure that students who do not attend religious instruction are offered another curriculum subject?**

Article 44.2.4 of the Irish Constitution states that:-

“Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.”

The above Article of the Constitution is reflected in Section 30 -2 (e) of the Education Act 1998 which states that: <sup>15</sup>

“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.”

Despite this right being in the Irish Constitution and Education Act 1998 there are no state guidelines on how the right to not attend religious instruction should be implemented on the ground in schools.

This failure by the State to issue Guidelines has meant that that right to not attend religious instruction has been undermined over the years.

Many schools make religion mandatory and if parents do manage to opt out their child no supervision is provided. In fact schools tell parents that they are not obliged to provide supervision or another subject and that it is the parents that are responsible for the supervision of their child if they opt them out of religious teaching or worship. This is clearly designed to ensure that as many students as possible don't exercise their right to not attend religious instruction.

There are now different types of religious teaching in Irish schools at primary and second level. Some of the teaching has been designed by religious bodies / patron bodies and the State has also developed courses at primary and second level. At second level the state religion course is an exam subject. In addition the majority of second level schools integrate Catholic faith formation into the State religion course and never inform parents that they are doing this.

There has been an effort over the last few years to redefine and restrict what religious instruction means in the Constitution in order to stem the flow of students requesting an opt out. This has been done without any State Guidelines in place and has meant that students are just told that

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<sup>15</sup> <http://www.irishstatutebook.ie/eli/1998/act/51/section/30/enacted/en/html>

the various courses on religion are not religious instruction but religious education and therefore suitable for all religions and none and consequently the opt out does not apply.

The State does not make any of these religion courses compulsory. In theory it seems that parents can opt their children out of religion classes in all Irish schools. The reality on the ground is the opposite and this is because of the failure of the state to put in place any guidelines. The following is from a recent case in relation to religious discrimination in a school with a Catholic ethos. The comments of the school at the WRC hearing outline their complete lack of understanding of the right to freedom of religion and belief, the rights of parents and freedom from religious discrimination.

This view is normal in Irish schools because of the influence of the Catholic church in teacher training. The school simply did not understand that singing hymns at a holy communion ceremony is the practice of religion and children from minority backgrounds should not be punished because they opt out.

From the case at the WRC (Equality Commission) <sup>16</sup>

“Summary of Respondent’s Case:

The Respondent submitted that that the claim is wholly unfounded as there was an option for the Complainant to attend and participate in the school choir that was to sing at the school’s First Communion ceremony (the Ceremony). The Respondent maintained that as a Catholic School it enjoys a proud tradition of participating in religious ceremonies. It further contended that music is an integral part of this, and that the school provides the choir for the Ceremony. The Respondent also submitted that singing is part of the music curriculum, and students who play instruments are also invited to participate in the Ceremony.

It maintained that all children from 3rd to 6th classes, regardless of religion (or none), are invited and welcome to participate in, and are all encouraged to give of their time for the benefit of others, including singing in the choir for those children receiving a sacrament. In this regard the school choir traditionally provides the music for the Ceremony on an annual basis. The Ceremony always takes place on a Sunday and not during the school week.

The Respondent submitted that all children are to participate in both the practice for the Ceremony and the Ceremony itself.”

The Department of Education leaves it up to each school to organise what subjects they offer under the curriculum. There are some compulsory state curriculum subjects that schools must teach and some optional subjects.

Schools also prepare students during the school day for religious sacraments and there is also religious worship in schools. Because of the lack of supervision minority students are taken to religious ceremonies because their parents cannot remove them from the school.

Under Section 30-2(d) of the Education Act 1998 <sup>17</sup> the Minister is obliged to ensure that the amount of instruction time allotted to subjects under the curriculum as determined by the Minister in each school day shall be such as to allow for such reasonable instruction time, for subjects relating to or arising from the characteristic spirit/ethos of the school.

Because of Section 30-2(d) of the Education Act 1998, the vast majority of schools at primary and second level put religion classes on their curriculum as a mandatory or a core subject.

Parents are left in a position that they must seek an opt out for their child. There are no guidelines on how to do this and many parents are not even aware that there is an opt out in schools with a

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<sup>16</sup> <https://www.workplacelrelations.ie/en/cases/2020/april/adj-00023650.html>

<sup>17</sup> <http://www.irishstatutebook.ie/eli/1998/act/51/section/30/enacted/en/html>

religious ethos. Many schools coerce parents into permitting their child to take religion classes because they claim that it is not religious instruction but a neutral course about religion and there is no right to opt out. Schools request parents attend meetings to discuss the opt out putting parents in a difficult position where they feel their beliefs are under scrutiny by the school authorities. In Ireland schools are publicly funded but essentially private schools. All schools have a lot of autonomous power.

The State has facilitated this abuse of rights because of their failure to put in place Guidelines on the Constitutional and human right to not attend religious instruction, it absolves itself of that responsibility and delegates it to schools and patron bodies.

### **Atheist Ireland Legal Opinion on religious instruction**

Atheist Ireland has recently got a Legal Opinion <sup>18</sup> on the Constitutional right to not attend religious instruction under Article 44.2.4 of the Constitution. The legal opinion states that the Constitutional right means that schools are obliged to supervise children outside the religious instruction class and that there is a good argument to be made that these students should have another subject.

The legal opinion also states that the question whether a course is religious instruction or not will be determined by reference to the substance of the course, not its name and, in the event of a dispute, can only be determined conclusively by a Court. It is at least probable, if not likely, that it applies to any course which through its cumulative impression has the effect of invalidating atheist perspectives through promoting theistic views. This applies whether the teaching in question relates to one religion only or more than one. If parents apprehend reasonably that the content of the course, or the manner in which it is taught, is fundamentally inconsistent with the child's atheist views, or that the course may cause an unwanted change in the child's atheist views then the right to not attend is engaged.

The main aim of the State religious education course under the curriculum at second level (updated 2019) <sup>19</sup> is to teach children about the relevance of religion to their lives and to respect beliefs. The state claims that this course is a neutral religion course, suitable for all religions and none but it is not neutral and objective and was never meant to be. <sup>20</sup>

The Legal Opinion also says that teaching Catholic instruction during the State religion syllabus, without offering a supervised opt out, represents an unlawful, systematic and stark attack on the right to not attend religious instruction in State funded schools. The majority of second level schools integrate catholic faith formation into the State religion course.

The recently enacted Section Section 62(7)(n) of the Education (Admissions to schools) Act 2018 <sup>21</sup> provides that where a school is providing religious instruction the school is required, in its admissions policy, to:

“provide details of the school's arrangements in respect of any student, where the parent of that student, or in the case of a student who has reached the age of 18 years, the student, has requested that the student attend the school without attending religious instruction at the school (which arrangements shall not result in a reduction in the school day in respect of the student concerned).”

If schools and Patron bodies are left to decide for themselves what they believe constitutes religious instruction under the Constitution then the opt out from religion will be undermined further. State Guidelines to define the Constitutional and human right to opt out of religion classes

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<sup>18</sup> <https://atheist.ie/2020/08/legal-opinion-constitutional-right-religious-instruction/>

<sup>19</sup> <https://ncca.ie/en/junior-cycle/subjects-in-development/religious-education>

<sup>20</sup> <https://atheist.ie/2020/08/the-state-religion-course-disrespects-atheists-and-humanists/>

<sup>21</sup> <http://www.irishstatutebook.ie/eli/2018/act/14/section/9/enacted/en/html>

are needed urgently to protect the right. There is no valid reason for the State to not introduce these Guidelines.

### **9. Article 2, Article 18, Article 26 – Neutral studying environment in schools outside of religious instruction classes**

**Questions: Does the State believe or not that it is required to ensure a neutral studying environment in publicly funded schools, outside the confines of religious instruction classes?**

**Will the State Party provide guidelines to schools regarding Characteristic spirit (ethos) to ensure that the rights of minorities to freedom of conscience and respect for their convictions is guaranteed?**

**Will the state party guarantee that all students have access to objective Relationship and Sexuality Education at primary level and Social, Personal and Health Education at second level?**

Section 15 2 (b) of the Education Act 1998 obliges Boards of Management of Schools to uphold the Characteristic Spirit (ethos) of the Patron of the school. The terms Characteristic Spirit or ethos are not defined in the Education Act 1998 or in equality legislation. There is no legislative clarity regarding to what degree a Characteristic Spirit or ethos can influence minorities who have no choice but to attend their nearest publicly funded school. The vast majority of schools in Ireland have a religious ethos, that includes denominational, multi-denominational and interdenominational.

The Supreme Court has recognised that a religious ethos can influence children “to some degree” but that a school is not obliged to change its general atmosphere to accommodate a child from another religion. (Campaign to Separate Church and State v Minister for Education 1996 - page 26).<sup>22</sup> The Supreme Court stated that:

“The Constitution therefore distinguishes between religious education and religious instruction, the former being the more wider term. A child who attends a school run by a religious denomination other than its 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 ethos of the school. A religious denomination is not obliged to change its general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

The State has no guidelines on what influencing “to some degree” means despite the words of the Supreme court that it was only the general atmosphere of the school that could influence a child if the family chose to send their child to the school. In reality minorities have no choice where to send their children to school. They send their children to the local publicly funded school and for many parents seeking a school outside their area (if one was even available) is far too much of a burden.

The result of this lack of legal clarity has meant that the right to freedom of conscience of minorities takes a back seat to the mission of schools as set out in their religious ethos. Most parents have no choice where they send their children to school, it has to be a school with a religious ethos (mainly catholic and christian) as parents are legally obliged to send their children to school.

In the vast majority of schools religion is integrated into the state curriculum and the daily life of the school. Schools are not obliged to inform parents where they integrate religion into the curriculum or the daily life of the school.

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<sup>22</sup> <http://www.irishstatutebook.ie/eli/2018/act/14/section/9/enacted/en/html>

The Department of Education does not interfere in ethos at all. The State leaves it up to each Patron body to implement its ethos according to its own nature and mission which means that Patron bodies define freedom of religion and belief and respect for minority parents and children according to their own mission and not in accordance with human rights.

In 2014 on the previous examination of Ireland the UN Human Rights Committee, <sup>23</sup> Yuval Shany asked the state party whether it believes or not that it is required to ensure a neutral studying environment in those schools, in denominational schools, outside the confines of religious instruction classes that can be opted out from. The State delegation never replied to this question.

“My follow-up question goes to the issue of denominational education, and I note the statement on improvements that are planned in the transparency of school admission policies. My two follow up questions in this regard are:

How does the Delegation explain the compatibility with the Covenant of a state of affairs that allows private schools, which have a near monopoly in Ireland on a vital public service, to openly discriminate in admission policies between children on the basis of their parents religious convictions?

I would appreciate, whether orally or in writing, the Delegation’s theory on this point, on this legal point. And whether the State believes or not that it is required to ensure a neutral studying environment in those schools, in denominational schools, outside the confines of religious instruction classes that can be opted out from?”

Subjects such as curriculum Relationship and Sexuality Education (RSE) at Primary level and Social and Personal Education at second level (SPHE) are delivered to all students through the Characteristic Spirit or ethos of each particular school. Lack of State Guidelines on ethos means that schools believe that have the right to integrate Catholic sex education into the State RSE subject and teach it to minority students without informing their parents that this is happening and facilitating an opt out with supervision or alternative objective RSE.

As the vast majority of schools have a religious ethos and mainly Catholic, it is Catholic sex education for students or no RSE/SPHE education at all.

The National Council for Curriculum and Assessment (A statutory body, Section 39 of the Education Act 1998) (NCCA), have recently examined curriculum RSE/SPHE at the request of the Minister for Education.

Their Report recommends comprehensive changes to curriculum RSE and SPHE. However they have not recommended any change to Section 15-2(b) of the Education Act 1998 <sup>24</sup> which can only mean that curriculum RSE/SPHE can still be delivered according to the ethos of the school.

Under Section 37 of the Employment Equality Act <sup>25</sup> teachers are obliged to uphold the ethos of their employer. They cannot challenge the ethos of the Patron and must comply with the policies of the Board of Management of the school which legally reflects the ethos of the Patron (Section 15-2(b) Education Act 1998).

The Catholic Church has their own published Guidelines on how curriculum RSE/SPHE is to be delivered by teachers. It is clear that they will ensure that it is Catholic RSE/SPHE that is delivered in Irish schools. <sup>26</sup>

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<sup>23</sup> <https://www.youtube.com/watch?v=-Q4UjpG9mow>

<sup>24</sup> <http://www.irishstatutebook.ie/eli/1998/act/51/section/15/enacted/en/html>

<sup>25</sup> <http://www.irishstatutebook.ie/eli/1998/act/21/section/37/enacted/en/html>

<sup>26</sup> <https://www.catholicbishops.ie/2014/04/08/guidelines-relationships-sexuality-education/>

The Oireachtas Education Committee (Parliament) also examined this issue and their Report was issued in early 2019. The Committee Recommended that Section 15-2(b) of the Education Act 1998 is reviewed to ensure that it cannot be used as a barrier to teaching RSE and SPHE. To date no legislative amendments have come before the Oireachtas Education Committee.

The Oireachtas Education Committee Report Recommended that: <sup>27</sup>

“13.The Committee recommends that clarity and direction is given by the DES (Dept of Education & Skills) regarding how schools and colleges, under religious patronage, should implement a comprehensive RSE programme so that all children and young people are treated equally.

14.The Committee recommends that the Education Act 1998 be amended or at least reviewed, so that ethos can no longer be used as a barrier to the effective, objective and factual teaching of the RSE and SPHE curriculum to which every student is entitled.

15.The Committee recommends that the necessary legislative amendments required to remove the role of ethos as a barrier to the objective and factual delivery of the RSE and SPHE curriculums be made as soon as possible and at the latest by the end of 2019.”

Teachers are not going to risk their jobs (Section 37 Employment Equality Act) to challenge how RSE/SPHE is taught. They are trained in teacher training colleges on how to uphold the ethos of the Patron.

The UN Committee on the Elimination of Discrimination against Women has Recommended that the Irish State: <sup>28</sup>

“(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;”

The Committee also stated that:

“The Committee further welcomes the introduction of a new short course in Social, Personal and Health Education (SPHE) for the junior cycle. Nevertheless, the Committee is concerned at:

(a) Reports of stereotypes and sexism in the field of education, and at the lack of concrete measures to curb this phenomenon;

(b) The gender-approach of the apprenticeship training programme, which effectively attracts few women and girls;

(c) The narrow approach towards the provision of sexuality education due to the fact the content of the Relationship and Sexuality Education (RSE) curriculum is left to institutions to deliver it according to the schools ethos and values and as a result it is often taught together with biology and religious courses.”

## **10. Article 2, Article 18, Article 26 – Religious Oaths in the Constitution**

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<sup>27</sup> [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_education\\_and\\_skills/reports/2019/2019-01-29\\_report-on-relationships-and-sexuality-education\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-01-29_report-on-relationships-and-sexuality-education_en.pdf)

<sup>28</sup> <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgA84bcFRy75ulvS2cmS%2f%2bil2Olic4vOOoI%2b%2fJdEApK4Y1bDv fs5hiCDBBEjK%2fEX3%2bio9SY4WyO2qG7JijYBEmLWqMSF1fNCIKeyd12zVqkP>

**Question: Will the State party commit to holding a referendum to remove religious oaths from the Constitution and replace them with a single declaration that does not reveal the religious or nonreligious beliefs of the person making it?**

Atheist Ireland runs a 'One Oath For All' campaign, to enable conscientious atheists to hold the office of President, Judge, Taoiseach, or other members of the Council of State. All of these offices are out of reach of conscientious atheists.

This is because, in order to take office, we would have to swear a religious oath, the wording of which is in the Constitution, that would force us to deny our philosophical convictions, and breach our human right to freedom of conscience and belief. This also contradicts our right to freedom of conscience under Article 44.2.1 of the Constitution and effectively renders us second-class citizens.

In 2014 the Committee told Ireland to replace the religious oaths for public office, and to remove the law against blasphemy. We have since removed the law against blasphemy, and we should now replace the religious oaths.

These public office-holders should instead make a single declaration of loyalty to the Irish Constitution, State, and people, that does not reveal anything about the person's religious or nonreligious beliefs.

**11. Article 2, Article 18, Article 13 – Freedom of Belief when seeking asylum**

**Questions: Will the State respect the right of asylum seekers to self determination on the basis of religion or belief?**

**Will the State ensure that asylum seekers have access to welfare and housing support as the Direct Provision centres are not suitable places for those fleeing persecution?**

There are applicants who seek asylum in Ireland because of persecution on the basis of religion or belief. The system in place treats vulnerable people with suspicion. Self determination in relation to beliefs is an essential part of the right to Freedom of Religion and Belief.

Immigrants who are members of minority religions can face an overlap of ethnic and religious prejudice and discrimination. We are particularly aware of this with regard to our colleagues in the Ahmadiyya Muslim Community of Ireland and the Evangelical Alliance of Ireland.

Atheist ex-Muslims in the asylum process face two particular problems. One, the State sometimes insists that they are still Muslims and that they would be safe being sent back to States where they would be in danger. And two, Muslims in the asylum process can be hostile towards ex-Muslims in the asylum process if they are not seen to be practising Islam.

We are aware of an applicant who has been told by the Irish State that he is a Muslim, because he grew up in a Muslim family, despite the fact that he is an atheist and that has told the State that he is an atheist. This is no different from telling an applicant that they are not a particular type of Muslim. The Ahmadiyya Muslim community suffers persecution and discrimination in Pakistan and are viewed as non-Muslims by other Muslims.

Essentially the Department of Justice and Equality is deciding whether or not a person is or is not an atheist or a member of a particular religion. But the State is not entitled to declare that a person's religious or nonreligious belief is not what the person tells them it is.

As an aside, even if the Department could in principle make such a determination, there is no reliable basis on which to make it. The Irish State has not even defined what a religion is. In Ireland many people refer to themselves as belonging to a particular religion, and they don't practice that religion or attend religious services. No government department has ever told them that they do not belong to that religion because they don't practice it or attend services. There is no reason to treat applicants differently, by arbitrarily and unlawfully assigning beliefs to them that they do not hold?

We get complaints from some applicants in the asylum process that they face harassment in the Direct Provision Centres because of their beliefs. They have fled persecution and are faced with a situation whereby they have to hide their beliefs and cannot express their beliefs in Direct Provision Centres.

Particularly around the time of Ramadan, ex Muslims are harassed because they are not fasting. We have also been told that ex Muslims have asked to be moved to other centres because of this harassment.

The lack of privacy in Asylum Centres put applicants in a perilous position as they must continue to hide their beliefs. They still have family at home who could be subject to persecution and whose situation would be further undermined if it was known that they had a family member that was ex Muslim or fleeing persecution in their home country.

It is not only particular States that persecute people if they dissent from a particular religion but also members of the general public.

The Direct Provision centres are not suitable places for those fleeing persecution. Applicants should be afforded equal treatment with citizens, to access welfare and housing supports.

Michael Nugent  
Chairperson  
Atheist Ireland

Jane Donnelly  
Human Rights Officer  
Atheist Ireland