

Atheist Ireland



To: Roderic O’Gorman TD
Minister for Children, Equality,
Disability, Integration and Youth

equalitypolicy@equality.gov.ie

19 October 2021

Consultation on the Review of the Equality Acts

Dear Minister O’Gorman,

Please find attached a submission from Atheist Ireland to the consultation on the review of the Equality Acts.

We would welcome the opportunity to discuss this further in any meetings or interviews you may be organising as part of the consultation.

Yours sincerely,

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Contents

1. Amending the category of 'Religion' to 'Religion or Belief'

- 1.1 Overview
- 1.2 Constitutional Obligations
- 1.3 International Obligations
- 1.4 The current situation

2. Constitutional Obligations

- 2.1. Conscience and Abortion
- 2.2 The Burke Case
- 2.3 The Campaign to Separate Church and State Case
- 2.4 Religious and Moral Education
- 2.5 The Constitutional Review Group Report
- 2.6 Mulloy v Minister for Education
- 2.7 Temple Street -v- D. & Anor
- 2.8 Article 26 and the Employment Equality Bill

3. International Obligations

- 3.1 The EU Employment Equality Directive (2000/78/EC)
- 3.2 The EU Race Directive (2000/43/EC)
- 3.3 The Charter of Fundamental Rights.
- 3.4 The European Convention on Human Rights
- 3.5 The International Covenant on Civil & Political Rights
- 3.6 The Belfast Agreement (Comparable Steps by the Irish Government)

4. Implications for Law and Practice

- 4.1 Laws
- 4.2 Education System
- 4.3 Health System

1. Amending the category of ‘Religion’ to ‘Religion or Belief’

1.1 Overview

Atheist Ireland recommends amending the category of ‘religion’ under the Equal Status Act and the Employment Equality Act (and any other relevant Acts) to ‘religion or beliefs,’ and clarifying that beliefs include positive philosophical convictions that are not based on religion.

Currently these Acts refer only to ‘religion’ and not to ‘religion or belief.’ The definitions include “... or one has a religious belief, background or outlook and the other has not.”¹

This discrimination undermines the right to freedom of conscience, as those of us with nonreligious beliefs or philosophical convictions are not treated equally.

Those of us with beliefs or philosophical convictions are defined in relation to ‘religion,’ and specifically as not having a religion, which puts us in a subordinate position. We are deprived of an equal position and equal protection, as people with positive philosophical convictions of our own, alongside those in the category of ‘religion.’

In the Venice Commission Guidelines for Legislative Reviews of Laws Affecting Religion or Belief includes it states that:

“3. Religion or belief.

International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.”

This submission addresses two categories of argument:

1.2 Constitutional Obligations

The Equal Status Act and the Employment Acts do not reflect the Irish Constitution because the Constitution also protects those with beliefs based on their conscience and is not confined to religious beliefs. Article 44.2.1 of the Irish Constitution guarantees freedom of conscience. The courts have never said that this is just confined to those with a religious conscience.

The Supreme Court looked at this issue (Re Article 26 and the Employment Equality Bill 1996)² before the EU Employment Equality Directive and the EU Race Directive were issued. There is nothing in those EU Directives or the Constitution that permits the state to ignore the equal status of beliefs/philosophical convictions alongside religious beliefs in legislation.

1.3 International Obligations

As well as the Irish Constitution, this discrimination in our Equality Acts does not reflect the following legal instruments:

- The EU Employment Equality Directive (Council Directive 2000/78/EC)
- The EU Race Directive (Council Directive 2000/43/EC)
- The Charter of Fundamental Rights.
- The European Convention on Human Rights
- The International Covenant on Civil & Political Rights
- The Belfast Agreement (Comparable Steps by the Irish Government)

1.3 The current situation

The result of the failure of the state to protect beliefs/philosophical convictions from discrimination means that for example someone that opposes abortion on the grounds of their religion is protected from discrimination under the Employment Equality Act and someone that opposes abortion on the grounds of their belief/philosophical conviction in secularism is not.

It can mean that someone that is committed to Veganism because of their religion is protected by our equality laws from discrimination, but that someone who is committed to Veganism because of their belief or philosophical convictions is not.

It means that someone who is committed to all laws reflecting their particular religion is protected from discrimination on the grounds of religion and someone who is committed to the separation of church and state is not protected on the basis of their belief/philosophical conviction.

It is clear that Ireland has changed, notwithstanding the fact that Catholics are still a majority there are now a variety of religious beliefs. According to the census in 2016 the non religious make up the largest minority. There are more non religious in the country than all the minority religions put together. The recent marriage figures show for the first time that there were more civil marriages than catholic marriages. ³

The system needs rebalancing so that the constitutional right of people to access the teaching profession and be treated equally is balanced against the right of the institution to uphold its ethos. There is no need for all teachers in schools to teach religion and be required in order to gain employment to have the Catholic Certificate in Religious studies.

After the marriage equality referendum and the abortion referendum it cannot be claimed that the Catholic Church reflects the conscience of all parents that say they are Catholic. There are many secularists who see themselves as Catholic and on conscience grounds seek to protect the fundamental rights of others to access reproductive rights.

Those who work in publicly funded hospitals with a religious ethos are also obliged to uphold that religious ethos. The rights of individuals to access reproductive rights that are not subject to the religious beliefs of a religious organisation takes second place. This is simply unreasonable and is not necessary or proportionate as it undermines freedom of religion.

2. Constitutional Obligations

2.1. Conscience and Abortion

The State recognises the requirement to respect conscience because in the Health (Regulation of Termination of pregnancy) Act 2018 states that:

“Conscientious objection

22. (1) Subject to subsections (2) and (3), nothing in this Act shall be construed as obliging any medical practitioner, nurse or midwife to carry out, or to participate in carrying out, a termination of pregnancy in accordance with section 9 , 11 or 12 to which he or she has a conscientious objection.”

Therefore the State recognises that conscientious objections are not only based on whether you have a religion or have no religion, because you can have no religion and still object to abortion on conscientious grounds.

If you can object on conscientious grounds to abortion then it follows that you can also object on conscientious grounds to publicly funded hospitals denying women their reproductive rights. The

Health (Regulation of Termination of pregnancy) Act 2018 reflects the Constitution which protects those with conscientious objection based on their convictions and those convictions are not necessarily based on a religious belief.

In the Education Act 1998, Section 30-2(e) recognises the right of parents to withdraw their children from any subject that is against their 'conscience'.

“(e) shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent of the student nor in the case of a student who has reached the age of 18 years, the student.”

2.2 The Burke Case

We appreciate that the State has appealed the Burke v Minister for Education case March 2020 to the Supreme Court. We do not believe the outcome will have consequences for the point we are making in this submission.

The Court of Appeal in the Burke case stated that:

187. The Constitution stresses the family's role in education. In Article 42.1, the State acknowledges that the primary and natural educator of the child is the family. Under Article 42.1, the State recognises that the family is the primary and fundamental unit group of Society. Article 41.1.1. describes the family as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law. Under Article 41.1.2 the State guarantees to protect the family, in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State. As we have seen, the relevance of the family provisions was recognised by the Supreme Court in the case of *In re Article 26 and School Attendance Bill, 1942*. In *DPP v. Best, Denham J.* in her judgment, one of five delivered, stated that “(t)he distinct place of the family in Irish society is a factor to be weighed in all relevant decisions.” Two other judges of the Supreme Court either expressly agreed with her judgment or held that the relevant provisions of Article 42 must be read in the context of the special recognition granted to the family in Article 41.1.1.”

188. ...”The Minister's answer to this submission is not so much to deny that Article 42 is somehow linked to Article 41 but to submit that the right being relied upon by the respondents is unclear and cannot and should not be viewed as being an unenumerated one deriving from the Constitution. The Minister submits that a concomitant right must be related to a duty and there was no such duty identifiable in any of the Articles relied upon by the respondent.

190. We consider that the structure of the Constitution, including the fact that Article 41 relating to the family is immediately followed by Article 42 relating to education, together with the express wording of those Articles, place the family at the heart of the provision of education. Parental duty to provide for education is paramount and parental choice in how that is provided is guaranteed. Furthermore, the right to education and the right of a child to realise his or her full potential, has been recognised as part of the natural rights guaranteed by Article 40.3. The State, pursuant to Article 41.1.2, also guarantees to protect the family in its constitution and authority.

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

If all parents have inalienable rights with regard to the education of their children Article 42.1 and the State must protect the family in its constitution and authority then why does it fail to recognise families with beliefs/philosophical convictions in our equality laws? There is nothing in the Constitution or any case law that says that the Constitution only recognises families with religious beliefs and those families that do not have a religion. It seems to us that recognising and protecting the 'beliefs/philosophical convictions' of families would be in harmony with Article 44.1 – the right to freedom of conscience.

2.3 The Campaign to Separate Church and State Case

In the Supreme Court in 1998 – Campaign to Separate Church and State, Justice Barrington stated that:

“But the matter does not end there. Article 42 of the Constitution acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of the parents to provide for the religious and moral, intellectual, physical and social education of their children. Article 42.S.2 prescribes that the parents shall be free to provide “this education” (i.e religious moral intellectual physical and social education) in their homes or in private schools or “in schools recognised or established by the state”. In other words the Constitution contemplates children receiving religious education in schools recognised or established by the State but in accordance with the wishes of parents.

It is in this context that one must read Article S.2 s.s.4 which prescribes 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.”

Article 44.2.4 is a sub section of the right to freedom of conscience Article 44.1. The State is bound to protect families that have beliefs/philosophical convictions and to protect them from discrimination.

2.4 Religious and Moral Education

The Constitution separates 'Religious' and 'Moral' education. They are not the same thing. Justice Barrington underlined the word 'religious' in the above quote from the Campaign case. Parents and students can have moral objections based on their conscientious beliefs/philosophical convictions in secularism or atheism.

Article 42.3.2 of the Constitution states 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.”

The Constitution does not state that all children must receive a basic religious education. It has separated the two concepts and recognises that parents can have morals outside of religion based on their conscience. There seems no legitimate reason to conclude that the Constitution does not protect 'belief/philosophical convictions' from discrimination.

Article 44.2.3

The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

Article 40.1

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.

You can also object to the State teaching your child morals through religion or developing values in your child to enable them to see the relevance of religion to their lives as this would be discrimination forbidden by Article 44.2.3 and contrary to the rights of parents in relation to the moral formation of their children Article 42.4.

There seems no legitimate reason not to recognise and protect beliefs/philosophical convictions in our equality laws.

2.5 The Constitutional Review Group Report

The Constitutional Review Group Report in 1995 said that Article 44.2.1 probably extends to philosophical convictions such as humanism or vegetarianism and that this Article broadly corresponds to Article 9 of the European Convention (the right to freedom of religion and belief). They stated that:

“Because the drafters of the Constitution must be presumed to have intended that every word and phrase should carry a specific and separate meaning, ‘freedom of conscience’ must be taken to import something additional to the guarantee of free practice and profession of religion. The Review Group considers that the guarantee probably also extends to philosophical beliefs such as humanism and may possibly also extend to other moral and ethical belief systems (for example vegetarianism). Article 44.2.1° broadly corresponds to the guarantees contained in Article 9 of the European Convention on Human Rights.”

2.6 Mulloy v Minister for Education

The courts in Ireland have said that the State cannot discriminate under Article 44.2.3. See Justice Walsh - Mulloy v Minister for Education 1975

“The present case concerns the disposition of public funds on a basis which, if sustainable, enables a person who is not a religious to obtain greater financial reward than a person who is a religious and is otherwise doing the same work and is of equal status and length of service...If that were constitutionally possible it would enable the State to prefer religious to lay people, or vice versa, in a matter which is in no way concerned with the safeguarding or maintenance of the constitutional right to free practice of religion...”

In my view, the State is not permitted by the Constitution to do this. The reference to religious status, in both the Irish text and the English text of the Constitution, relates clearly to the position or rank of a person in terms of religion in relation to others either of the same religion or of another religion or to those of no religion at all. Thus it ensures that, no matter what is one’s religious profession or belief or status, the State shall not impose any disabilities upon or make any discrimination between persons because one happens to be a clergyman or a nun or a brother or a person holding rank or position in some religion which distinguishes him from other persons, whether or not they hold corresponding ranks in other religions or whether or not they profess any religion or have any religious belief, save where it is necessary to do so to implement the guarantee of freedom of religion and conscience already mentioned.”

2.7 Temple Street -v- D. & Anor

In the High Court in 2011, Justice Hogan stated that: ⁴

“35. There is thus no doubt at all but that parents have the constitutional right to raise their children by reference to their own religious and philosophical views.”

“27. Along with the guarantee of free speech in Article 40.6.i, Article 44.2.1 guarantees freedom of conscience and the free practice of religion. Taken together, these constitutional provisions ensure that, subject to limited exceptions, all citizens have complete freedom of philosophical and religious thought, along with the freedom to speak their mind and to say what they please in all such matters....” (AB v Children’s Hospital Temple Street & CD & EF – January 2011)

In the High Court case in 1996 Campaign to Separate Church and State v Minister for Education, Justice Costello cited the Rights guaranteed to parents under the European Convention and the United Nations. He said that the Constitution had developed the significance of these parental Rights and has imposed an obligation on the State in relation to them. He stated that:

“The parties to the First protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that States when assuming functions in relation to education “shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions (Article 2). The Irish Constitution has developed the significance of these parental Rights and in addition has imposed obligations on the State in relation to them.”

2.8 Article 26 and the Employment Equality Bill

The Supreme Courts said in Re Article 26 and the Employment Equality Bill 1996 that:

“The attack has been directed more against sub-s. 1 which entitles an institution to give more favourable treatment, on the religion ground, to an employee or a prospective employee "where it is reasonable to do so in order to maintain the religious ethos of the institution" or to take action "which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution. The use of the words "reasonable" and "reasonably necessary" implies that the test is to be an objective one and that the matter is to be resolved on a case to case basis. Counsel assigned by the Court point to the use of the word "ethos" in sub-s. 1 and submit that the religious institution or denomination will state in each case what its "ethos" is and that the test will in fact become subjective. It is true that "ethos" is a vague term and is nowhere defined in the Bill. Chambers English Dictionary gives, inter alia, the following meaning to the word "the distinctive habitual character and disposition of an individual group". It is probably true to say that the respect for religion which the Constitution requires the State to show implies that each religious denomination should be respected when it says what its ethos is. However the final decision on this question as well as the final decision on what is reasonable or reasonably necessary to protect the ethos will rest with the court and the court in making its overall decision will be conscious of the need to reconcile the various constitutional rights involved.”

3. International Obligations

As well as the Irish Constitution, this discrimination in our Equality Acts does not reflect the following legal instruments:

- The EU Employment Equality Directive (Council Directive 2000/78/EC)
- The EU Race Directive (Council Directive 2000/43/EC)
- The Charter of Fundamental Rights.
- The European Convention on Human Rights

- The International Covenant on Civil & Political Rights
- The Belfast Agreement (Comparable Steps by the Irish Government)

3.1 The EU Employment Equality Directive (Council Directive 2000/78/EC)

This refers specifically to ‘religion or belief’ in a way that equally respects the positive rights of atheists, secularists, and all those with beliefs/philosophical convictions based on their conscience. It states that:

“The purpose of this Directive is to lay down a general frame-work for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.”

“11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.”

“(29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.”

“Article 4 – Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.”

Beliefs/philosophical convictions are protected under the EU Employment Equality Directive. There is supposed to be a balance in relation to these rights. The Irish State has not balanced these rights and permitting publicly funded religious bodies to discriminate on the grounds of religious belief is simply not proportionate to the aim of protecting religious freedom. In many cases the permitted discrimination is not reasonable or necessary.

3.2 The EU Race Directive (Council Directive 2000/43/EC)

Because of the intersectionality between religious and racial discrimination, the failure to recognise this indirect discrimination has meant that for example our education system does not reflect the diversity within the country.

3.3 The Charter of Fundamental Rights

Article 10 — Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 20 - Equality before the law

Everyone is equal before the law.

Article 21 - Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

3.4 The European Convention on Human Rights

The European Court has already found that secularism is a belief/philosophical conviction protected by Article 9 of the Convention, along with other convictions — see list on Guide on Article 9 of the European Convention on Human Rights.

Article 9 of the European Convention states:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Case of Lautsi v Italy European Court 2011 ⁵

“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 (*ibid.*).”

“35. The applicant took the view that the interference with the exercise of his freedom to manifest his religion did not correspond to any of the aims listed in Article 9 § 2. The Government maintained, for their part, that the impugned measure pursued two legitimate aims: to protect the rights and freedoms of others; and to maintain the authority and impartiality of the judiciary. The Court notes that the second paragraph of Article 9 does not refer expressly to the second of those aims. As regards the first of the aims invoked – to ensure the protection of the rights and freedoms of others – the Government referred to the principle of secularism and the need to promote tolerance in a post-conflict society. The Court has already held that secularism is a belief protected by Article 9 of the Convention (see *Lautsi and Others v. Italy* [GC], no. 30814/06, § 58, ECHR 2011) and that an aim to uphold secular and democratic values can be linked to the legitimate aim of the “protection of the rights and freedoms of others” within the meaning of Article 9 § 2 (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 99, ECHR 2005XI, and *Ahmet Arslan and Others v. Turkey*, no. 41135/98, § 43, 23 February 2010). There is no reason to decide otherwise in the present case.”

The following is a list of European Court cases where various philosophical convictions were recognised and are protected by Article 9 of the Convention. See Council of Europe handbook on Article 9 of the European Convention. ⁷ None of these philosophical convictions are protected from discrimination by our equality legislation.

“18. Article 9 applies to the aforementioned beliefs and doctrines regardless of whether the respondent State officially recognises them as “religions”; to assume the contrary would be to consider that the State can exclude them for the protection of Article 9 by refusing to recognise them (*Mockutė v. Lithuania*, § 119).

“17. The organs of the Convention have explicitly or implicitly acknowledged that the safeguards of Article 9 § 1 of the Convention apply to:

(c) various coherent and sincerely-held philosophical convictions, such as

- attachment to secularism (*Lautsi and Others v. Italy* [GC], § 58; *Hamidović v. Bosnia Herzegovina*, § 35).
- pacifism (*Arrowsmith v. the United Kingdom*, Commission report, § 69) principled opposition to military service (*Bayatyan v. Armenia* [GC])
- veganism and opposition to the manipulation of products of animal origin or tested on animals (*W. v. the United Kingdom*, Commission decision)
- opposition to abortion (*Knudsen v. Norway*, Commission decision; *Van Schijndel and Others v. the Netherlands*, Commission decision)
- a doctor’s opinions on alternative medicine, constituting a form of manifestation of medical philosophy (*Nyyssönen v. Finland*, Commission decision)
- the conviction that marriage is a lifelong union between a man and a woman and rejection of homosexual unions (*Eweida and Others v. the United Kingdom*)”

3.5 The International Covenant on Civil & Political Rights

Article 18 of the ICCPR states:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

The UN General Comment on Article 18 of the ICCPR states that:-

“2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

3.6 The Belfast Agreement (Comparable Steps by the Irish Government)

The failure of Irish equality legislation to protect philosophical convictions has implications under the Belfast Agreement.⁸

In the section on rights, Safeguards, and Equality of Opportunity, the Belfast Agreement includes:

“Comparable Steps by the Irish Government

9. The Irish Government will also take steps to further strengthen the protection of human rights in its jurisdiction. The Government will, taking account of the work of the All-Party Oireachtas Committee on the Constitution and the Report of the Constitution Review Group, bring forward measures to strengthen and underpin the constitutional protection of human rights. These proposals will draw on the European Convention on Human Rights and other international legal instruments in the field of human rights and the question of the incorporation of the ECHR will be further examined in this context. The measures brought forward would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland.”

Beliefs or philosophical convictions are protected in Northern Ireland by their equality laws which are based on the European Convention but are not protected here.

The Irish Government has taken no steps to put in place equality legislation that would protect beliefs/philosophical convictions as well as religious beliefs.

The following is the Section on religion and beliefs in the UK Equality Act 2010. Section 10 explicitly protects philosophical convictions. This shows the difference between the Irish Equal Status Act, the Employment Equality Act and the UK Equality Act. UK equality legislation includes:

“Religion or belief

(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief— (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular

religion or belief; (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.”

The remit of the Equality Commission of Northern Ireland includes:

“Religious belief/Political opinion equality
Part of the Equality Commission's remit is to tackle unlawful discrimination and unlawful harassment”

4. Implications for Law and Practice

The above arguments have implications for any of the Acts of the Oireachtas where religious beliefs are given privilege over nonreligious philosophical convictions. These include:

4.1 Laws

- Amend any laws that refer to ‘religion’ to refer instead to ‘religion or belief.’
- Amend the Employment Equality Act 1998 and Equal Status Act 2000, which allow churches, schools and hospitals and training colleges to discriminate on the grounds of religion. This discrimination is not proportionate to its purpose of protecting freedom of religion.
- Amend the Charities Act 2009, which includes the advancement of religion but not of atheism as a charitable purpose; and presumes that a gift for the advancement of religion is of public benefit. This has no legitimate purpose.
- Amend the Civil Registration Act 2004, so that religious and nonreligious bodies are treated equally when nominating solemnisers. This has no legitimate purpose.
- Amend the Electoral Act to ensure that churches are subject to political funding regulations on the same basis as secular advocacy groups. This has no legitimate purpose.
- Examine all existing and future laws to ensure that there is one law for all, based on human rights and not religious doctrine.

4.2 Education System

- Vindicate the Constitutional right of all students to attend publicly funded schools without attending religious instruction.
- Ensure that all schools deliver the curriculum, including sex education, in an ‘objective, critical and pluralistic manner,’ as ruled by the European Court of Human Rights.
- Provide effective remedies for nonreligious parents and their children to vindicate, in practice and law, their right to equality before the law and freedom from discrimination.
- Respect the European Court of Human Rights ruling that the State cannot absolve itself from responsibility for human rights violations by delegating its responsibilities to private bodies.

4.3 Health System

- Ensure that no religious values or activities or environments are imposed on patients who do not share those religious beliefs.
- Remove the traditional privileges that religious bodies have in healthcare service provision and decision-making.

¹ Employment Equality Act: “religious belief” includes religious background or outlook. Equal Status Act: As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are: (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (the “religion ground”)

² [http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/\(WebFiles\)/EB802820AD644CFC802575F3003323B1/\\$FILE/Employment%20Equality_%5B1997%5D%20%20IR%20321.htm](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/(WebFiles)/EB802820AD644CFC802575F3003323B1/$FILE/Employment%20Equality_%5B1997%5D%20%20IR%20321.htm)

³ <https://www.cso.ie/en/releasesandpublications/er/mar/marriages2019/>

⁴ <https://www.bailii.org/ie/cases/IEHC/2011/H1.html>

⁵ <http://hudoc.echr.coe.int/eng?i=001-104040>

⁶ <http://hudoc.echr.coe.int/eng?i=001-179219>

⁷ https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

⁸ <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>