

Atheist Ireland



Submission to Citizens' Assembly on Gender Equality

6th March 2020

Introduction and Recommendations

Introduction

Atheist Ireland is an 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.

Since being formed in late 2008, we have campaigned for a secular Irish constitution, parliament, laws, government, and education and healthcare systems. We are partners in the dialogue process between the Government and religious and nonreligious bodies.

We have addressed various Oireachtas Committees, the Constitutional Convention, Citizens Assembly, United Nations Committees, the OSCE, Council of Europe bodies, and the Presidents of the European Union.

Recommendations

Given our history, the right to freedom of religion in the Constitution reflects the stance that the Catholic Church takes on this basic right. The 1937 constitution, has discriminated against women and girls in many ways. We have gradually removed some of those constitutional discriminations through referendums. We ask the Citizens' Assembly on Gender Equality:

1. To examine the need for further constitutional change to fully reflect human rights law without discrimination based on sex, sexual orientation, gender, or marital status, with particular reference to amending Article 42.1 about education to apply to non-marital parents.
2. To recommend mandatory provision of sexual and reproductive health education, for adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016; and amending of Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act to ensure that it is delivered objectively without influence from religious ethos.
3. To examine and counter attempts by the Holy See to maintain discrimination against women and LGBT people, with particular reference to this week's report by the UN Special Rapporteur on Freedom of Religion and Belief, addressing gender-based violence and discrimination, and the Holy See's rejection of this report as unacceptable and offensive.

Michael Nugent
Chairperson
Atheist Ireland

Jane Donnelly
Human Rights Officer
Atheist Ireland

1.1 Constitutional Change

The Constitution Review Group of 1995 stated that:

<https://web.archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf>

“Articles 41 and 42 of the constitution “were heavily influenced by Roman Catholic teaching and Papal encyclicals. They were clearly drafted with only one family in mind, namely, the family based on marriage.”

The family recognised and protected in Articles 41 and 42 is the family based on marriage. In *The State (Nicolaou) v An Bord Uchtála* Walsh J in the Supreme Court judgment stated that it was quite clear “that the family referred to in [Article 41] is the family which is founded on the institution of marriage and, in the context of the Article, marriage means valid marriage under the laws for the time being in force in the State.

Support for this view derives from Article 41.3.1 “The State pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack.” The effect of this definition is that neither a non-marital family nor its members are entitled to any of the protection or guarantees of Article 41. Likewise, they are probably not comprehended by the terms of Article 42: see *G v An Bord Uchtála*.”

Instead, “rights of an unmarried mother and of a child of unmarried parents, which some might consider as rights resulting from a family relationship, have been held to be personal rights which the State is obliged to protect under Article 40.3. An unmarried father has been held to have no personal rights under Article 40.3 in relation to his child (*The State (Nicolaou) v An Bord Uchtála*).”

The Constitution Review Group stated about Article 42.1, about whether the rights of parents in regard to education should be confined to married parents:

“A further consideration is that Article 42 as drafted envisages only what might be termed the straightforward case of a married couple and their children. Indeed, the reference to parents in Article 42.1 is confined to the family based on marriage: see, for example, *The State (Nicolaou) v An Bord Uchtála* [1996] IR 567. For all the reasons already set out in the discussion on Article 41 with regard to the position of non-marital parents, the Review Group is of the opinion that, consistently with these earlier recommendations, it is appropriate that the rights under Article 42 should apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.”

“Recommendation: Article 42.1 should be amended to apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question.”

1.2 Equality Before the Law

In 1995 the Constitutional Review Group recommended that Article 42.1 should be amended. This has not happened and it seems that Article 42.1 only applies to married parents. Article 42.1 is a very important right with regard to parents and their children. It is used to support the right to a religious education for families and the courts have said that it puts a positive obligation on the State to help parents with the religious education of their children.

It is the only Article in the Constitution that uses the word ‘inalienable’. As it stands now the State only recognises their positive obligation to assist parents with the ‘religious’ education of their children and does not even recognise parents that have ‘philosophical convictions’. On top of that it also seems that Article 42.1 only refers to parents that are married.

Article 40.1 of the 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 functions.”

If Article 42.1 only refers to married parents then taking into account Article 40.1 it means that unmarried parents are discriminated against on moral or social grounds. This can only mean that the Irish State does not recognise the inalienable right of unmarried parents to respect for their convictions on moral grounds.

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.

<https://www.teachdontpreach.ie/2019/10/campaign-to-separate-church-and-state-v-minister-for-education-1995/>

“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.”

Justice Costello referred to parental rights and did not confine those to married religious parents.

1.3 Children’s Rights Referendum 2012

The children’s rights referendum added a new Article 42A which refers to the marital status of parents in the context of the state supplying the place of the parents. This should be extended to other references in the constitution to parents and families.

1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.

2.1 In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

2.1 The Right to Objective Sex Education

The Irish State recognises that all adolescent boys and girls have a right to objective sex education, but it fails to protect that right because of religious discrimination. Religious bodies and ETBs interfere in access to this right, and the State does nothing to ensure that parents have an effective remedy to vindicate that right for their children. This means that the Constitution has failed to protect parents and children from religious discrimination.

In Circular Letter 0037/2010 the Department of Education states:

https://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0037_2010.pdf

“1.5. Access to sexual and health education is an important right for students under the terms of the Article 11.2 of the European Social Charter. The Council of Europe European Committee of Social Rights, which examines complaints regarding breaches of the Charter, has indicated it regards this Article as requiring that health education “be provided throughout the entire period of schooling” and that sexual and reproductive health education is “objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception or different means on maintaining sexual and reproductive health.”

In 2017 the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that Ireland should integrate objective compulsory sex education into the school curriculum, and should closely monitor and evaluate its delivery by schools. This was a result of Atheist Ireland raising this issue with the Committee on the Elimination of Discrimination Against Women (CEDAW). It was the first time the UN examined sex education in Irish schools.

The Recommendation from the UN Committee reads:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en

“(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 expressed concern about:

“(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.”

2.2 Catholic School Ethos Opposes Objective Sex Education

The Catholic Bishops made a written submission to the NCCA consultation on Education about Religions, Beliefs and Ethics. In this they said:

“In the area of Relationships and Sexuality Education... it is explicitly acknowledged that the curriculum must be interpreted in the context of the characteristic spirit of the school. Similarly, NCCA proposals in areas such as religion and ethics should accord with the characteristic spirit of the school. The determination of the ethos or characteristic spirit of a school is not the function of the NCCA or the Minister but rests with the Patron...”

The Catholic Primary Schools Management Association made a written submission to the NCCA review process on RSE. This submission says about ethos:

“Relationships and sexuality education in Catholic schools is situated within a morals and values framework that is derived ultimately from the life and teaching of Christ and transmitted through the teachings of the Catholic Church ... Relationships and Sexuality Education ought therefore to be an integral part of the curriculum in a Catholic school. It should present the positive, yet challenging, Catholic vision for relationships, chastity, marriage and the family...”

The Catholic Primary Schools Management Association also made a written submission to the NCCA consultation on Education about Religions, Beliefs and Ethics. In this they said:

“Based on this, the development of NCCA proposals in areas impinging on religious education and the characteristic spirit of the school are of a different nature than other NCCA proposals. This is already acknowledged in the area of Relationships and Sexuality Education as part of the NCCA SPHE curriculum where it is explicitly acknowledged that the curriculum must be interpreted in the context of the characteristic spirit of the school. Education about Religious Beliefs and Ethics is another such area...”

2.3 Amend the Education Act for Objective Sex Education

We ask the Assembly to recommend the following regarding the content of objective sex education:

- (a) mandatory provision of sexual and reproductive health education, for adolescent girls and boys, as recommended by the UN Committee on the Rights of the Child in 2016;
- (b) a single consistent curriculum for relationships and sexuality education, across all schools, as recommended by the Ombudsman for Children in 2016; and
- (c) scientifically objective, standardised, age-appropriate education on sexual and reproductive health and rights, as recommended by the UN Committee on the Elimination of Discrimination against Women in 2017.

We ask the Assembly to recommend the following regarding the delivery of objective sex education:

- (d) the content must be delivered in an objective, critical and pluralistic manner, that avoids indoctrination, outside of optional religion classes, as recommended by the Irish Human Rights and Equality Commission in 2015; while
- (e) ensuring a neutral studying environment, including in denominational schools, outside of optional religious instruction classes, as raised with Ireland by the UN Human Rights Committee in 2014.
- (f) To do this, the Oireachtas must amend Sections 9(d), 15(2)(b) and 30(2)(b) of the Education Act, which have been identified as problems by the NCCA in 2017.

3.1 Report of UN Rapporteur

The United Nations Special Rapporteur on Freedom of Religion and Belief, Mr Ahmed Shaheed presented a report this week to the UN addressing gender-based violence and discrimination in the name of religion or belief.

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_48.docx

He stated that in a number of States worldwide religious precepts underlie laws and state-sanctioned practices that constitute violations of the right to non-discrimination of women, girls and lesbian, gay, bisexual and transgender (LGBT+) persons. In other States, claims of religious freedom are being used to rollback and seek exemptions to laws that protect against gender-based violence and discrimination.

The Special Rapporteur provided cases of both phenomena and their impact on gender equality and freedom of religion or belief worldwide. He explored freedom of religion or belief and non-discrimination as two and mutually reinforcing rights and clarifies the existing international legal framework that governs their intersection. He concluded by emphasising the responsibility of States to creating enabling environments to advance the non-discrimination and freedom of religion of belief rights of women, girls and LGBT+ persons.

“48 The Special Rapporteur notes that while religious organisations are entitled to autonomy in the administration of their affairs, such deference should be extended within a holistic conception of human rights grounded in the universality, indivisibility, interdependence and inalienability of all human rights. For example, the Committee on Economic, Social and Cultural Rights has called on States to ensure that church-run institutions are not permitted to discriminate against non-ecclesiastical employees on grounds of religious belief, sexual orientation or gender identity.

49 He notes, however, that the principle of institutional autonomy does not extend to State deference to harmful discriminatory gender norms. Nor does it oblige States to defer from intervening to prevent harmful practices because said practices are informed by 'religious ethos'; including discriminatory acts that have as their purpose or effect the nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis."

The Irish delegation supported the Report from the UN Rapporteur. We ask that the Assembly also supports it and its implications for gender equality in Ireland.

3.2 Response of Holy See to Report of UN Rapporteur

The Catholic Church continues to oppose attempts to end discrimination against women, girls, and LGBT people. In this case the Holy See stated of the Special Rapporteur's report: <http://www.nuntiusge.org/images/STATEMENTS/20200302.pdf>

"Particularly unacceptable and offensive are the numerous references that recommend that freedom of religion or belief and conscientious objection must be surrendered for the promotion of other so-called "human rights", which certainly do not enjoy consensus, thus being a sort of "ideological colonisation" on the part of some States and international institutions."

"It bears repeating that the Holy See has always understood "gender" and related terms according to the ordinary, generally accepted usage of the word "gender", based on the biological identity that is male and female. In this regard, the Holy See recalls its Final Statement, offered at the conclusion of the Beijing Conference on Women, on 15 September 1995: "The term "gender" is understood by the Holy See as grounded in biological sexual identity, male or female [...]" (Cf. Holy See's Final Statement at the 4th World Conference on Women, Beijing, 1995).

The Report from the UN Rapporteur, Ahmed Shaheed and the response of the Holy See leads us to believe that there are Constitutional issues regarding Gender, Discrimination and Freedom of Religion and Belief that need to be addressed.

Given our history it is not surprising that our Constitution, laws and policy reflect Catholic Church teaching on Freedom of Religion and Belief and discrimination. Those basic rights influence law and policy and it is clear that Article 40.1 (equality before the law) is not sufficient to protect against discrimination on the grounds of gender or marital status.

The UN Rapporteur has said that International law is clear that the manifestation of religion or belief may be limited by States in order to protect the fundamental rights of others.

"70 The Special Rapporteur rejects any claim that religious beliefs can be invoked as a legitimate 'justification' for violence or discrimination against women and girls or against people on the basis of their sexual orientation or gender identity.

International law is clear that the manifestation of religion or belief may be limited by States, in full conformity with the criteria outlined in Article 18(3) ICCPR, to protect the fundamental rights of others, including the right to non-discrimination and equality, a principle upon which all human rights, including the right to freedom of religion or belief depends."

Catholic Church teaching on Freedom of Religion and Belief and Human Rights law are incompatible. There is no doubt that our Constitution, law and policy has mainly reflected Catholic Church teaching. We recognise that a lot of change has taken place over the years but there are still areas where we must decide on whether we want a Constitution that is based on the teachings of one religion or a pluralist Constitution that reflects and protects basic human rights.

4. Conclusion

As Desmond M. Clarke put it in his book *Church and State Essays in Political Philosophy* 1984:
<https://www.amazon.com/Church-State-Essays-Political-Philosophy/dp/0902561294/>

“Religious liberty cannot be appreciated from the perspective of those who believe that they infallibly know the truth. Freedom of thought and inquiry can only be appreciated from the perspective of those who are not so dogmatically certain of the conclusion of human inquiries about religion. The Church confuses the two standpoints, and expects civil authorities to support its partial judgment.

By contrast, religious freedom implies that the state has no competence to decide which if any of a number of competing religious traditions should be supported, because the state is not burdened with the Church’s belief in its own infallibility. Religious freedom, therefore, demands that the state should neither foster nor impede any religious tradition, that the believer and unbeliever have equal rights and privileges in a state; and that the various legal, social, education and other state-organised facilities should neither hinder nor encourage the religious beliefs of citizens.

The Roman Catholic Church does not subscribe to such a theory. For the Church, the fundamental value for each citizen is the achievement of salvation or, in different language, reaching the truth in religious matters. And religious liberty is endorsed, in a qualified sense, only as a necessary prerequisite for achieving that objective. In the tradition of liberal political theory, freedom of thought and inquiry, together with freedom of expression, are fundamental values in their own right which are not compromised in the interests of some other objective. The Church does not believe in religious liberty as a basic right.

It only believes in its own liberty to fulfil what it perceives to be a divinely revealed mission, and in the consequent liberty of individual citizens to freely follow what the Church believes to be their moral obligation, namely, to join the Roman Catholic Church. The liberty of the Church, understood in this way, and the liberty of the individual citizen from state interference, are both compatible with the State’s actively fostering the religious beliefs of citizens. The religious liberty of the citizen is reduced to the liberty to practise one’s faith without state interference, without the liberty to reject all religion.”