

Atheist Ireland



To: Paschal Donohoe TD
Minister for Finance

cc Minister for Education
Comptroller & Auditor General
Oireachtas Public Accounts Committee
Oireachtas Education Committee

Dear Minister Donohoe,

We wish to make a complaint about the misuse of public funds in relation to the criteria by which any class or classes of recognised schools or centres for education are to be funded in a given school year.

Section 12(1) of the Education Act 1998 involves you as Minister for Finance.

12(1) The Minister, with the concurrence of the Minister for Finance, shall determine and publish in each school year criteria by which any class or classes of recognised schools or centres for education are to be funded...

The Constitutional conditions for the funding of recognised schools are not being met. The Supreme Court has said that these conditions are a foundational pillar of the Constitution.

We ask that you ensure that the Constitutional conditions are given practical application on the ground and that the misuse of public funds ends.

We would also like to meet you to discuss this.

We have made a formal complaint to the Comptroller and Auditor General as well as the Oireachtas Public Accounts Committee. We attach our complaint to the Comptroller & Auditor General, and a follow-up letter to the complaint.

You can also read the complaint online at this link.

https://atheist.ie/common/Submissions/AI_C&AG_Complaint_Dec_21.pdf

In our complaint to the C&AG, we refer in particular to Articles 44.2.4 (the right to not attend religious instruction) and Article 42.4 (the obligation of the state to have due regard for the rights of parents in relation to the religious and moral formation of their children).

The recent findings of the Supreme Court in *Burke v Minister for Education* support this complaint as does the Supreme Court case, *Campaign to Separate Church and State* case from 1998.

Not attending Religious Instruction is a condition of State funding under Article 44.2.4 of the Constitution. The right of parents in relation to the religious and moral formation of their children is also a condition of state funding under Article 42.4.

Article 42.4 states that:

“The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.”

Article 44.2.4 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.”

In the recent Burke case, the Supreme Court upheld the rights of parents in relation to the religious and moral formation of their children in recognised schools. The Court said that this provision reflects a concern for upholding parental authority; a foundational pillar of the Constitution that accords with Article 41 recognising the family as “the natural primary and fundamental unit group of” Irish society.

The Supreme Court stated in the Burke case that:

“4. It is clear that a right inures to the family under Article 42.1 of the Constitution to be the “primary and natural educator of the child” and the State is required “to respect the inalienable right and duty of parents to provide ... for the religious and moral, intellectual, physical and social education of their children.” Hence, under Article 42.2, the mother and father of Elijah Burke and Naomi Power were “free to provide this education in their homes or in private schools or in schools recognised or established by the State.” But, while under

Article 42.3 the State may require, “as guardian of the common good”, that “children receive a certain minimum education, moral, intellectual and social” (physical is not mentioned, and the minimum standard required is currently set at school leaver-standard for a 16 year old), the State cannot “oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

Article 42.4, in requiring the State to provide for “free primary education”, also places an endeavour, but only that, before the State “to supplement and give reasonable aid to private and corporate educational initiative” and “when the public good requires it” towards “other educational facilities or institutions”. An overall saver in the constitutional text is that the State, in providing for free primary education and in endeavouring to assist post-primary education in various forms, have “due regard ... for the rights of parents, especially in the matter of religious and moral formation.” This provision reflects a concern for upholding parental authority; a foundational pillar of the Constitution that accords with Article 41 recognising the family as “the natural primary and fundamental unit group of” Irish society. Hence, society is built around the family.”

The Supreme Court stated in the Campaign to Separate Church and State case in 1998 that:

“These references appear to me to establish two facts. First the Constitution does not contemplate that the payment of monies to a denominational school for educational purposes is an “endowment” of religion within the meaning of Article 44 S.2 s.s.2 of the Constitution. Secondly, the Constitution contemplated that if a school was in receipt of public funds any child, no matter what his religion, would be entitled to attend it. But such a child was to have the right not to attend any course of religious instruction at the school.” (page 24)

“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 of 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 the parents. It is in this context that one must read Article 44 S.2s.s.4 which prescribes that:-....” (page 25).

The Supreme Court has said that the rights of parents in relation to the religious and moral education (Article 42.1 and Article 42.2) of their children must be read in the context of Article 44.2.4 – the right to not attend religious instruction. They also said that the rights of parents in relation to the religious and moral formation of their children accords with Article 41 and that this provision reflects a concern for upholding parental authority; a foundational pillar of the Constitution.

The Department of Education has failed to give practical application and administer the constitutional right to not attend religious instruction and the constitutional right of parents in relation to the religious and moral formation of their children.

In the Burke case the Supreme Court said that:

“10... Administration assumes that there is already in existence a principle and that all the administrator has to do is to establish the facts and circumstances and then to apply the principle. It is of the essence of good administration that the principle must be fairly clear and precise so that, in any given situation, the result should be the same, whether it is administrator A or administrator B who has taken the decision. For, in its purest form, administration requires only a knowledge of the pre-existing principle and an appreciation of the facts to which it is being applied; it is an intellectual process involving little discretion. By contrast, policy-making is largely discretionary; the policy-maker must decide, as between two alternatives, the one which he or she considers best in the interest of the community... [taking into] account all of the relevant factors and which factors are relevant is, to a considerable extent, left to him or her.”

The Department of Education has gone further and attacked a foundational pillar of the Constitution. In Circular Letter 0062/2018 they stated that:

“This clear separation of religious instruction from the NCCA Religious Education syllabus has the effect of ensuring that withdrawal does not arise for students studying the NCCA Religious Education syllabus where the school provides the subject as part of its normal range of subjects.”

It is parents who decide what is or is not suitable religious and moral formation for their children as this is a condition of state funding and a foundational pillar of the Constitution. It is not up to the Department of Education, Patron bodies, the NCCA, Schools or teachers to decide what is or is not suitable religious and moral formation and education for children or to redefine these terms with no legal basis.

The Supreme Court has already found that the right of parents in relation to the Religious and moral education of their children must be read in the context of Article 44.2.4 – the right to not attend religious instruction. The Department of Education has exceeded its jurisdiction by declaring

that syllabus Religious Education is separated from religious instruction and therefore the right to not attend does not arise.

These Constitutional conditions of funding in relation to the recognition of schools are the affair of the Minister for Education and the Minister for Finance. They do not come under Article 44.2.5, the Constitutional right of religious institutions to manage their own affairs, or Section 7.4(iv) of the Education Act 1998. It is the affair of the Department of Education if schools make syllabus Religious Education mandatory and especially given Circular 0062/2018 issued by the Department of Education.

In October 2021 we wrote to the Department of Education and asked that Circular Letter 0062/2018 be removed. We did not get any response.

As mentioned earlier, we ask that you ensure that the Constitutional conditions are given practical application on the ground and that the misuse of public funds ends.

We would also like to meet you to discuss this.

Yours sincerely,

Jane Donnelly
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Atheist Ireland

Michael Nugent.
Chairperson
Atheist Ireland