

Freedom of Conscience, Religion, and Belief (Arts 2, 18 and 26)



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

June 2022

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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. Our recommendations based on paragraph 20

20 (a) Part 1 Education (Admission to Schools) Act 2018

The State should commit to ensuring 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.

The State should ensure that schools and patron bodies comply with Section 62(7)(n) of the Education (Admissions to schools) Act 2018 by actually writing into their admission policies the details of the arrangements for children who are not attending religious instruction, and not by saying that parents have to meet with the school principal to discuss it.

20 (a) Part 2 Other measures to improve access to secular schools

The State should correct its false statement to the Committee that the government's policy is to have 400 'multi-denominational or non-denominational' schools by 2030, and acknowledge that this policy refers only to 'multi-denominational' schools.

The State should commit to establishing secular or non-denominational schools at primary and second level, and not merely multi-denominational schools.

The State should legally and clearly define the terms denominational, multi-denominational, interdenominational, and non-denominational, as per the Irish Human Rights & Equality Commission Report 'Religion & Education; A human Rights Perspective'.

The State should provide statutory guidelines to ensure that publicly funded schools:

- Respect and vindicate the positive rights of minorities to freedom of conscience and respect for their religious or nonreligious philosophical convictions.
- **Respect and vindicate the right of children who exercise their constitutional right to not attend religious instruction, and provide such children with supervision or an alternative curriculum subject.**
- Provide a neutral studying environment, outside the confines of religious instruction classes that students can choose to not attend.

20 (b) Religious Oaths in the Constitution

The State should 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.**

The State should reverse its claim, made at the European Court, that these oaths 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.

20 (c) Section 37(1) of the Employment Equality Act 1998

The State should amend 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 particularly in publicly funded schools.

3. List of Issues Paragraph 20

This submission addresses paragraph 20 of the List of Issues, which reads:

Freedom of conscience and religious belief (arts. 2, 18 and 26)

20. Please report on the measures taken to ensure that the right to freedom of conscience and religious belief is fully respected, in law and in practice, on a non-discriminatory basis. In this regard, and bearing in mind the Committee's previous recommendation (CCPR/C/IRL/CO/4, para. 21), please:

- (a) provide information about the implementation of the Education (Admission to Schools) Act 2018 and indicate whether progress has been made in the implementation of other measures recommended by the Committee to improve access to secular schools;
- (b) indicate whether there have been any changes to the constitutional provisions requiring persons who take up certain senior public positions to take religious oaths; and
- (c) indicate whether amendments have been made to section 37 (1) of the Employment Equality Act 1998 to bar any discrimination in employment in the fields of health and education.

Paragraph 20 refers back to CCPR/C/IRL/CO/4, paragraph 21, which reads:

Freedom of religion

21. The Committee is concerned at the slow pace of progress in amending the provisions of the Constitution that oblige individuals wishing to take up senior public office positions, such as President, members of the Council of State and members of the judiciary, to take religious oaths.

It is also concerned about the slow progress in increasing access to secular education through the establishment of non-denominational schools, divestment of the patronage of schools and the phasing out of integrated religious curricula in schools accommodating minority faith or non-faith children.

It expresses further concern that under section 37(1) of the Employment Equality Acts, religious-owned institutions, including in the fields of education and health, can discriminate against employees or prospective employees to protect the religious ethos of the institution (arts. 2, 18, 25 and 27).

The State party should take concrete steps to amend articles 12, 31 and 34 of the Constitution that require religious oaths to take up senior public office positions, taking into account the Committee's general comment No. 22 (1993) on freedom of thought, conscience and religion, concerning the right not to be compelled to reveal one's thoughts or adherence to a religion or belief in public.

It should also introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status, and ensure that there are diverse school types and curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.

It should further amend section 37(1) of the Employment Equality Act in a way that bars all forms of discrimination in employment in the fields of education and health.

4. Education (Admission to Schools) Act 2018

4.1 Paragraph 20 of the list of issues states:

(a) Part 1 provide information about the implementation of the Education (Admission to Schools) Act 2018

Bearing in mind, from CCPR/C/IRL/CO/4, paragraph 21

[The State] should also introduce legislation to prohibit discrimination in access to schools on the grounds of religion, belief or other status...

The State party's responses states:

162. The Education (Admission to Schools) Act 2018 aims to create an equitable approach to school admissions policies for all primary and post-primary schools.

163. The Act ensures that where a school is not oversubscribed and places are available, the school must admit all applicants. A school must indicate, in its admission policy that the school will not discriminate on any of the grounds specified in the Equal Status Act 2000.

4.2 Update on this issue:

The Education (Admissions to Schools) Act 1998 ¹ 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.

The Act only applies to primary schools and not second level schools. Children go into second level at about twelve years of age.

Over half of second level schools are under religious patronage and operate with a religious ethos. Contrary to the State's response regarding an equitable approach at post-primary schools, these schools can and do give preference to co-religionists under this Act.

Also, the Act 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.

Also, all Schools at primary and second level 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,"

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.

¹ <http://www.irishstatutebook.ie/eli/2018/act/14/enacted/en/html>

Section 62(7)(n) of the Education (Admissions to schools) Act 2018 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).”

Atheist Ireland has compiled research on a sample hundred admission policies of schools, and we found that most schools are defying this requirement of the Act. ²

- Some schools do not refer at all to this requirement. Of those that do refer to it:
- Most denominational schools try to evade the requirement by stating that parents must seek a meeting with the Principal to discuss the arrangements.
- Most ETB schools try to evade the requirement by making a spurious distinction with no legal basis between religious instruction and religious education.
- Most schools do not address the right to not attend the class, i.e. the right to not physically leave the classroom and be supervised or get another subject.
- Some schools unlawfully ask parents to give reasons for wanting their children to not attend religion classes of any description thus breaching the right to privacy.
- These evasions are coordinated, based on common templates from either the Catholic Church, the Edmund Rice Schools Trust, or the Education and Training Boards.

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.

4.3 What we recommend:

The State should commit to ensuring 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.

The State should ensure that schools and patron bodies comply with Section 62(7)(n) of the Education (Admissions to schools) Act 2018 by actually writing the details of the arrangements into their admission policies, and not by saying parents have to meet with the school principal.

5. Other measures to improve access to secular schools

5.1 Paragraph 20 of the list of issues states:

(a) Part 2 indicate whether progress has been made in the implementation of other measures recommended by the Committee to improve access to secular schools.

Bearing in mind, from CCPR/C/IRL/CO/4, paragraph 21

[The Committee is] concerned about the slow progress in increasing access to secular education through the establishment of non-denominational schools, divestment of the patronage of schools... [The State should] ensure that there are diverse school types and

² <https://atheist.ie/2020/11/schools-defy-new-law/>

curriculum options available throughout the State party to meet the needs of minority faith or non-faith children.

The State party's response states:

164. The Government's objective is to have 400 multi-denominational or non-denominational schools in the primary system by 2030. As of February 2021 there are now 159 multi-denominational primary schools and 359 multi-denominational or non-denominational post-primary schools.

5.2 Update on this issue:

We include here updates on three elements of this issue as follows:

- 5.2.1 No secular or non-denominational schools
- 5.2.2 The right of parents to freedom of conscience
- 5.2.3 The right to a neutral studying environment

5.2.1 No secular or non-denominational schools

The State's response to this is false. There are **no** publicly funded secular or non-denominational schools in Ireland, and there are no plans to open any or to divest patronage to any.

The Programme for Government states: ³

The Government will continue to expand the plurality of our schools to reflect the full breadth of society. We will:

- Achieve the target of at least 400 multi-denominational primary schools by 2030, to improve parental choice.
- Expand and prioritise the transfer of viable schools to Community National Schools.

Note that the government's commitment is to provide at least 400 'multi-denominational' schools, and not, as falsely stated to in its response to the Committee, 400 'multi-denominational or non-denominational' 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.

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

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

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

³ https://www.finegael.ie/app/uploads/2020/06/ProgrammeforGovernment_Final_16.06.20.pdf

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.

The State broadcaster RTE has recently revealed that Catholic Bishops lobbied the Government last June to change the law, so they could once again be allowed to discriminate against non-Catholic children in access to publicly funded primary schools. ⁴

The Catholic Bishops said their support for divesting a small number of publicly funded primary schools to multi-denominational patronage was dependent on this happening.

This is yet another example, as Atheist Ireland has articulated for years, of why divesting some schools to different patron bodies cannot solve the injustices of our sectarian education system.

This is because multiple patronage and multiple ethos as the basis for policy is the underlying problem in Irish schools, not the solution. The Oireachtas Education Committee has already concluded that this brings about segregation of children and inequality.

Even with the maximum implementation of the proposed Government plan of 400 multi-denominational schools (and no non-denominational schools), that would still leave 85% of schools with a single denominational ethos.

Also, most areas have standalone schools, so atheist or minority faith parents in those areas would have no choice other than to send their child to a school with an even stronger Catholic ethos.

The Supreme Court in the recent *Burke v Minister for Education* case said it is a foundational pillar of the Constitution that the State, when funding schools, must have due regard for the rights of parents in the religious and moral formation of their children. That means all parents, not just those from religious majorities in particular areas. ⁵

Recent research commissioned by the umbrella body for Education and 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 is called 'That's how it works here: The place of religion in publicly managed second level schools in Ireland.' It states that: ⁶

“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,' the Irish Human Rights and Equality Commission stated in relation to some Education and Training Boards schools that are regarded as interdenominational or multi-denominational: ⁷

“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:

⁴ <https://www.rte.ie/news/2022/0609/1303940-catholic-schools/>

⁵ <https://www.casemine.com/judgement/uk/62323ac0b50db9fc0c9263a4>

⁶ <https://bera-journals.onlinelibrary.wiley.com/doi/abs/10.1002/berj.3490>

⁷ <https://www.ihrec.ie/documents/religion-and-education-a-human-rights-perspective/>

“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.”

5.2.2 The right of parents to freedom of conscience

Irish parents have more rights in relation to the education of their children under the Irish Constitution than they have under human rights law. The High Court in the Campaign to Separate Church and State case in 1996 explained this as follows: ⁸

“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.

It declares (in sub paragraph 2 of this Article) that parents are to be free to provide for the education of their children in their homes, or in private schools or in schools recognised or established by the State, that the State shall not oblige parents in violation of their conscience to send their children to schools established or designated by the State, and that the State shall require (in view of actual conditions) that children receive a certain minimum education, moral, intellectual and social...”

There are Constitutional conditions to the State funding of schools in Ireland: the State must have due regard for the rights of parents in relation to religious and moral formation, and students have a right to not attend religious instruction. In practice, the State ignores these Constitutional conditions and leaves it up to each school to implement them according to their own ethos.

Most patron bodies develop their own religious or ethical course that reflects their ethos (Section 30.2.d Education Act). At second level the State has developed a Religious Education course, but it is not a neutral and objective course. The State claim that this course does not qualify as religious instruction and a student therefore cannot choose to not attend it under Article 44.2.4 of the Constitution. To make this claim they rely on interpretations of the Constitution that are different to the interpretations made by the Supreme Court. We explain this in more detail below.

The Supreme Court in the recent *Burke v Minister for Education* case ⁹ has reaffirmed the rights of parents in relation to Article 42.4. Article 42.4 puts a constraint on the State in relation to funding schools. They said that the rights of parents with regard to the religious and moral formation of their children is a foundational pillar of the Constitution and must be protected. That foundational pillar is a condition of state funding alongside the right to ‘not attend’ religious instruction under Article 44.2.4.

Atheist Ireland has in the past year raised this issue with the Comptroller and Auditor General, the Oireachtas Public Accounts Committee, and the Oireachtas Education Committee. We have met with the Department of Education and National Council for Curriculum and Assessment about this, and they have accepted that we have raised legal issues that they have to look at and come back to us about.

Here are the legal arguments that we have raised with these bodies:

(a) Parents have positive inalienable rights regarding the education of their children

⁸ <https://atheist.ie/2021/01/irish-constitution-gives-parents-more-rights/>

⁹ <https://www.casemine.com/judgement/uk/62323ac0b50db9fc0c9263a4>

- (b) Nonreligious parents have the same positive rights as religious parents*
- (c) Two constitutional articles place conditions on state funding of schools*
- (d) The Department has a duty to put in place an administrative scheme that respects these constitutional conditions*
- (e) The Department is misusing public funds by funding schools outside the limits of its constitutional jurisdiction*
- (f) The Department is allowing schools to administer this misuse of public funds*
- (g) The Department is forcing teachers to be complicit in this misuse of public funds*

And here is the detail of those arguments:

(a) Parents have positive inalienable rights regarding the education of their children

Article 41.1 and 42.1 of the Irish Constitution:

“The State recognises the Family as the natural primary and fundamental unit group of Society... The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents...”

Supreme Court, *Burke v Minister for Education*, 2022:

“The State, in providing for free primary education and in endeavouring to assist post-primary education in various forms [under Article 42.4], [must] have “due regard ... for the rights of parents... 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.”

(b) Nonreligious parents have the same positive rights as religious parents

Article 44.2.1 of the Irish Constitution:

“Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.”

High Court, *Campaign Case*, 1996:

“[European Convention States] shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions...”

High Court, *AB v Children’s Hospital Temple Street*, 2011:

“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.”

(c) Two constitutional articles place conditions on state funding of schools

Article 42.4:

“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:

“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.”

(d) The Department has a duty to put in place an administrative scheme that respects these constitutional conditions

Supreme Court, *Burke v Minister for Education*, 2022:

“Policy... must be turned into an administrative scheme... Any such a scheme must abide by the Constitution. That is the over- arching jurisdiction under which every organ of the State must act.”

“Can there be any more fundamental delimiting of jurisdiction than that which is set down by the Constitution?”

The Government made no decision to exceed constitutional limits... With the considerable stress of keeping interested parties... within the ark of consideration... the Department of Education devised a scheme which inadvertently exceeded constitutional limits.”

(e) The Department is misusing public funds by funding schools outside the limits of its constitutional jurisdiction

Supreme Court, *Burke v Minister for Education*, 2022:

“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”...

An overall saver in the constitutional text is that the State [in providing for and endeavouring to assist education] 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 Art 41 recognising the family as “the natural primary and fundamental unit group of” Irish society. Hence, society is built around the family.”

(f) On the ground, the Department is allowing schools to administer this misuse of public funds

Supreme Court, *Burke v Minister for Education*, 2022:

“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.”

However, on the ground, the Department is allowing schools to make up their own administrative schemes that are outside the limits of the constitutional jurisdiction of the Department and every organ of the State. Patron bodies and schools have not ratified the convention, and should not be allowed to unilaterally interpret it.

(g) On the ground, the Department is forcing teachers to be complicit in this misuse of public funds

Teachers are placed in a conflict of conscience between Section 6 Education Act 1998:

“Every person concerned in the implementation of this Act shall have regard to the following objects... (a) to give practical effect to the constitutional rights of children...”

and Section 37 of the Employment Equality Act, which means that teachers are legally obliged to uphold the ethos of the patron, under threat of dismissal.

Under Section 24.2.4 of the Education Act the Board of Management, not the Department of Education, is responsible for hiring teachers, even though the State pays for them. In ETB schools, the patron body hires the teachers, and the State pays for them. SO the teachers have to comply with the ethos of the Board of Management or Patron body.

5.2.3 The right to a neutral studying environment

Section 15 of the Education Act states that:

(1) It shall be the duty of a board to manage the school on behalf of the patron...

(2) A board shall [shall] uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school...

There are no plans by the State to change this part of the Act, and in practice it means that, in the vast majority of schools, the curriculum is delivered through the lens of the Catholic Church.

In these 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.

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,¹⁰ 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.

In 2021, it was revealed that a pro-life anti-abortion video was shown to a group of sixth-year students at a Catholic secondary school in Tipperary, causing some of the girls who watched it to break down in tears and sparking a major complaint to the Teaching Council.¹¹

Atheist Ireland made a complaint to the Department of Education and the Oireachtas Education Committee about this video and related issues The Minister replied to us, but she relied on distinctions that are not based on what the Courts in Ireland have defined as Religious Education (Article 42.1), Religious Formation (Article 42.4) and Religious Instruction (Article 44.2.4).

¹⁰ <https://www.youtube.com/watch?v=-Q4UjpG9mow>

¹¹ <https://www.independent.ie/irish-news/education/sixth-year-girls-in-tears-over-anti-abortion-video-40752424.html>

We attach below a link to the Minister's response and our response to that. ¹²

5.3 What we recommend:

The State should correct its false statement to the Committee that the government's policy is to have 400 multi-denominational or non-denominational schools by 2030, and acknowledge that this policy refers only to multi-denominational schools.

The State should commit to establishing secular or non-denominational schools at primary and second level, and not merely multi-denominational or inter-denominational.

The State should 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'.

The State should provide statutory guidelines to ensure:

- *That publicly funded schools respect and vindicate the positive rights of minorities to freedom of conscience and respect for their religious or nonreligious philosophical convictions.*
- **That publicly funded schools respect and vindicate the right of children who exercise their constitutional right to not attend religious instruction, and that schools must provide such children with supervision or an alternative curriculum subject.**
- *That publicly funded schools provide a neutral studying environment, outside the confines of religious instruction classes that students can choose to not attend.*

6. Religious Oaths in the Constitution

6.1 Paragraph 20 of the list of issues states:

(b) indicate whether there have been any changes to the constitutional provisions requiring persons who take up certain senior public positions to take religious oaths;

Bearing in mind, from CCPR/C/IRL/CO/4, paragraph 21

The State party should take concrete steps to amend articles 12, 31 and 34 of the Constitution that require religious oaths to take up senior public office positions, taking into account the Committee's general comment No. 22 (1993) on freedom of thought, conscience and religion, concerning the right not to be compelled to reveal one's thoughts or adherence to a religion or belief in public.

The State party's response to this states:

165. Articles 12.8, 31.4 and 35.5.1 of the Constitution requires the President, judges and members of the Council of State to take a religious oath upon assuming office.

166. The Government approved consideration of an amendment to this provision in 2012. The matter was then referred to the Constitutional Convention.

¹² <https://atheist.ie/2022/01/minister-for-education-replies-to-atheist-ireland-about-religion-in-schools-and-anti-abortion-video/>

167. Between 2013 and 2014, 27% of all public submissions to the Constitutional Convention had recommendations based on the secularisation of the Constitution.

168. Following the Convention, the 35th Amendment of the Constitution (Separation of Church and State) Bill 2017 included the removal of the requirement to sign a religious oath. The Bill lapsed with the dissolution of the Oireachtas in 2020.

6.2 Update on this issue:

Atheist Ireland continues to run our ‘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.

Not only has there been no referendum, but in 2021 the State defended the oaths against a challenge from some Irish citizens at the European Court of Human Rights.¹³

Worryingly, the State argued at the European Court that these oaths 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.”

The State also argued that the oaths are not religious per se, but manifestations of the political and cultural heritage of the country. However, the Court stated that tradition cannot relieve the State of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols.

The Court ultimately dismissed the case on admissibility grounds, ruling that the applicants had failed to demonstrate they were victims of the law as they had not demonstrated they were directly impacted by it, and it therefore did not address the substantive issue.

6.3 What we recommend:

*The State should 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.***

The State should reverse its claim, made at the European Court, that these oaths 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.

7. Section 37(1) of the Employment Equality Act 1998

7.1 Paragraph 20 of the list of issues states:

(c) indicate whether amendments have been made to section 37(1) of the Employment Equality Act 1998 to bar any discrimination in employment in the fields of health and education.

Bearing in mind, from CCPR/C/IRL/CO/4, paragraph 21

It should further amend section 37(1) of the Employment Equality Act in a way that bars all forms of discrimination in employment in the fields of education and health.

The State party’s response to this states:

169. The Equality (Miscellaneous Provisions) Act 2015, which commenced on 1 January 2016, provided for certain changes in the exclusion of discrimination on particular grounds

¹³ Róisín Shortall and Others v Ireland [2021] App No. 50272/18

in certain employments, including educational or medical institutions maintained, in whole or in part, by monies provided by the Oireachtas by amending Section 37 of the Employment Equality Act 1998.

170. The purpose of the amendment is to protect employees against discrimination, while respecting religious freedoms guaranteed in the Constitution.

171. The amended Section 37 imposes a higher burden of proof on relevant employers. It obliges them to show that any favourable treatment of an employee or prospective employee is limited to the religion ground and the treatment does not constitute discrimination on any of the other discriminatory grounds.

172. Favourable treatment on the grounds of religion shall be taken to be discrimination, unless by reason of the nature of the institution's activities, the religion of the employee or prospective employee constitutes a genuine, legitimate and justified occupational requirement having regard to the institution's ethos, that the action taken against a person must be objectively justified by reference to that institution's aim of protecting its religious ethos and that the means of achieving that aim are appropriate and necessary.

7.2 Update on this issue:

Section 37(1) of the Employment Equality Act 1998 has not been amended in way that bars any discrimination in employment in the fields of health and education. That is what the State party means when it says 'while respecting religious freedoms guaranteed in the Constitution.' In reality the State is ignoring the right to freedom of conscience guaranteed in the Constitution.

Section 37(1) still gives permission to discriminate on religious grounds to any 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.

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.

At second level the vast majority of schools have a religious ethos. This includes Education and Training Board (ETB) schools which are classed as either interdenominational or multi-denominational as well as schools under the patronage of religious bodies.

Because of Section 37(1), teachers at primary or second level must uphold the religious ethos of their school. 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.

We link below to a teacher contract from the Catholic Primary Schools Management Association dated 2012. This contract obliges teachers to uphold the ethos of the patron. It states: ¹⁴

"1.02 The Employee acknowledges that s/he has been informed that the School has a Catholic ethos and that it is the duty of the Employee to uphold, and be accountable to the Employer for so upholding, the Catholic ethos of the School, as determined by the Patron of the School."

7.3 What we recommend:

The State should amend 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 particularly in publicly funded schools.

¹⁴ <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2022/06/TeacherContract.pdf>