

ATHEIST IRELAND

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Submission to the UN Committee on
Economic, Social and Cultural Rights

55 Session



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1. Introduction

1.1 The Irish State has no plans to adopt comprehensive anti-discrimination legislation to include all the grounds referred to in article 2, paragraph 2, of the Covenant.

1.2 The Minister for Education & Skills Jan O'Sullivan, and Aodhan O'Riordain Minister of State at the Dept of Justice & Equality, have both claimed recently that a Referendum will be needed to remove discrimination in our education system.

1.3 Ireland's anti discrimination laws, and now - according to the Government - our Constitution, are not compatible with the ICESCR, and there is no effective remedy through the courts to vindicate the rights guaranteed by the ICESCR.

2. Atheist Ireland

2.1 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 support or finance or give special treatment to any religion.

2.2 Since being formed in late 2008, we have campaigned for a secular Irish Constitution, parliament, laws, government, education and healthcare systems. We have made submissions to the Irish Government and political parties, the UN Human Rights Council under the periodic review, the UN CERD Committee and the Council of Europe under the Framework Convention for the Protection of National Minorities.

2.3 We have addressed Irish parliamentary committees, the Irish Constitutional Convention, the OSCE and the Presidents of the European Union, Parliament and Council. We are members of Atheist Alliance International, and we hosted the World Atheist Convention in Dublin in 2011. You can read details of our policies on our website at <http://atheist.ie>.

3. List of Issues

3.1 We would like to respond to the following from the List of Issues.

General information

1. Please clarify whether the Covenant is part of the domestic law of the State party and can be invoked before, and/or applied by, domestic courts. Please also provide examples of cases where rights which are not guaranteed in the State party's Constitution, such as the right to food and cultural rights, have been adjudicated by domestic courts referring to or using the Covenant.

Article 2, paragraph 2 – Non-discrimination

Please indicate whether the State party intends to adopt comprehensive anti-discrimination legislation to include all the grounds referred to in article 2, paragraph 2, of the Covenant.

3.2 This is the response of the Irish State to this:

13. Ireland has comprehensive and robust equality legislation in place, prohibiting discrimination on nine specified grounds. It is not intended to extend these grounds, which already fully protect the rights recognised in ICESCR. ¹

3.3 The state party has no plans to adopt comprehensive anti-discrimination legislation to include all the grounds referred to in Article 2 Paragraph 2 of the Covenant. There are no plans in place to amend Article 40.1 of the Irish Constitution equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive Grounds.

3.4 Further to our Submission on the List of Issues, ² and the list of issues published by the Committee, there has been no response from the State to amend any of the pieces of legislation that clearly are not compatible with the ICESCR.

3.5 As per our Submission on the List of Issues these are the relevant pieces of legislation that discriminate on religious grounds against atheist and secularists.

- Education Act 1998
- Admission to Schools Bill
- Equal Status Act 2000
- Employment Equality Act 1998
- Religious Oaths for Political and Legal Jobs
- The Right to an Effective Remedy

3.6 The State has ignored the Concluding Observations and comments of the UN Human Rights Committee in July last year under the ICCPR and does not intend to guarantee human rights in Ireland.

4. Minister for Education says there will be no change

4.1 It is clear from a recent reply to a Dail question (Parliament) that the state does not recognize its obligations under the ICESCR and that it intends to continue to discriminate and provide no effective remedy to vindicate the rights guaranteed under the ICESCR.

4.2 These are the Dail (Parliament) Questions from Deputy Clare Daly and the Minister for Education Jan O'Sullivan's written reply on religious discrimination in the education system.

¹ http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/IRL/E_C-12_IRL_Q_3_Add-1_19963_E.docx

² http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fICO%2fIRL%2f18441&Lang=en

4.3 Questions from Deputy Daly

“466. To ask the Minister for Education and Skills if her attention has been drawn to the fact that, in Dublin alone, there are approximately 9,000 children attending national schools who have been illegally discriminated against on religious grounds in seeking admission to these schools and, as a consequence, the parents of these children have in some cases been forced to adopt a religion, in which they do not believe, by getting their child baptised (details supplied); and her plans to address this issue.” [8761/15]

“493. To ask the Minister for Education and Skills if her attention has been drawn to a matter (details supplied) regarding a redress scheme that may be required for children and parents, who are suffering illegal religious discrimination in admissions policies in national schools in view of the fact, in Dublin alone, there is approximately 9,000 children attending national schools who have been illegally discriminated against on religious grounds; and if she will address the illegal religious discrimination in admission policies in national schools.”

4.4 The Response from the Minister

“I propose to take Questions Nos. 466 and 493 together. It is important to be clear that it is a parent who decides the religious denomination of their child. It is not a decision of a school.

Parents can choose which school to apply to and where the school has places available the pupil should be admitted. However, in schools where there are more applicants than places available a selection process may be necessary. This selection process and the enrolment policy on which it is based must be non-discriminatory and must be applied fairly in respect of all applicants. However, this may result in some pupils not obtaining a place in the school of their first choice.

Schools are not permitted to discriminate against an applicant for admission on any of the nine grounds set out in the Equal Status Act.

The Equal Status Act provides that any primary or post primary school whose objective is to provide education in an environment that promotes certain religious values may admit a student of a particular religious denomination in preference to other students. The legislation also provides that such a school can also refuse to admit a student who is not of that religion but only where the school proves that this refusal is essential to maintain the ethos of the school.

Schools that comply with the requirements of the equality legislation do not therefore discriminate on religious grounds. I do not accept the Deputy's references to illegal discrimination and therefore I consider that the issue of redress does not arise.

The draft Education (Admission to Schools) Bill does not propose changes to the existing equality legislation. However, the draft Bill will provide for schools to explicitly state in the school's admission policy that it will not discriminate against an applicant for admission on the grounds of disability, special educational needs, sexual orientation, family status, membership of the traveller community, race, civil status, gender or religion.

The draft Bill will also provide for schools to publish an enrolment policy which will include details of the school's arrangements for students who do not want to attend religious instruction.

The issue of choice of school is separately being considered by my Department with a focus on providing for diversity when recognising new schools.”³

5. Two Ministers say referendums are needed

5.1 Two Government Ministers have effectively conceded that the Irish Constitution is incompatible with Ireland’s obligations under the ICESCR.

5.2 Jan O’Sullivan, Minister for Education,⁴ has said that the Schools Admission Bill had to be drafted “in the context of the Constitution and equality legislation... We can’t within that take away the provision whereby schools can protect their own ethos.”⁵

5.3 Aodhan O Riordain, Minister of State at the Department of Justice and Equality,⁶ has said that scrapping Section 37.1 would be a constitutional issue and the most the Government could do was to amend it.⁷

5.4 UN General comment No. 9, on The domestic application of the Covenant states:

A The duty to give effect to the Covenant in the domestic legal order

3. Questions relating to the domestic application of the Covenant must be considered in the light of two principles of international law. The first, as reflected in article 27 of the Vienna Convention on the Law of Treaties, is that “[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. In other words, States should modify the domestic legal order as necessary in order to give effect to their treaty obligations. The second principle is reflected in article 8 of the Universal Declaration of Human Rights, according to which “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

The International Covenant on Economic, Social and Cultural Rights contains no direct counterpart to article 2, paragraph 3 (b), of the International Covenant on Civil and Political Rights, which obligates States parties to, inter alia, “develop the possibilities of judicial remedy”. Nevertheless, a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not “appropriate means” within the terms of article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies.

D. The treatment of the Covenant in domestic courts

³ <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015030300078>

⁴ <http://www.education.ie/en/The-Department/Ministers/Minister-for-Education-and-Skills/Minister-for-Education-and-Skills-Jan-O-Sullivan-T-D-.html>

⁵ <http://www.irishtimes.com/news/education/school-management-body-very-concerned-at-admissions-policy-1.2167438>

⁶ <http://www.labour.ie/aodhanoriordain/>

⁷ <http://www.independent.ie/irish-news/education/gay-teachers-suffering-real-anxiety-over-religious-law-31122706.html>

15. It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations. Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the State in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees of equality and nondiscrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.

6. No Effective Remedy

6.1 There is no effective remedy to vindicate the rights guaranteed under the ICESCR as schools in Ireland are not 'organs of the state'. Our education system is opted out of human rights law.

6.2 The European Convention on Human Rights Act 2003 only applies to 'organs of the state' as the Irish state cedes control of schools to the interests of patron bodies who are not 'organs of the state' (Section 1.1).

6.3 The European Convention on Human Rights Act 2003⁸ states that:-

"organ of the State" includes a tribunal or any other body (other than the President or the Oireachtas or either House of the Oireachtas or a Committee of either such House or a Joint Committee of both such Houses or a court) which is established by law or through which any of the legislative, executive or judicial powers of the State are exercised;"

6.4 In the Louise O'Keeffe case at the European Court the court found that:-

"C. The Court's conclusion

187. For these reasons, the Court considers that it has not been demonstrated that the applicant had an effective domestic remedy available to her as regards her complaints under the substantive limb of Article 3 of the Convention. There has, therefore, been a violation of Article 13 of the Convention. The Court therefore dismisses the Government's preliminary objection that this complaint was manifestly ill-founded."

6.5 It was also noted in the O'Keeffe case that:-

"40. As to the claim about the responsibility of the State in the provision of primary education under Article 42 of the Constitution and the measures put in place to discharge that responsibility, Hardiman J stated:

"I have already analysed the terms of Article 42 from which it will be seen that the Minister, in the case of this national school, was simply providing assistance and subvention to private and corporate (i.e. Roman Catholic) endeavour, leaving the running of the school to the private or corporate entities. The Minister is thereby, as Judge Kenny pointed out in *Crowley v. Ireland* [1980] I.R. 102], deprived of the control of education by the interposing of the Patron and the Manager between him and the children. These persons, and particularly the latter, are in much closer and more frequent contact with the school than the Minister or the Department.

I do not read the provisions of Article 42.4 as requiring more than that the Minister shall "endeavour to supplement and give reasonable aid to private and corporate educational initiative", to "provide for free primary education". ... In my view the Constitution specifically

⁸ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fICO%2fIRL%2f18441&Lang=en

envisages, not indeed a delegation but a ceding of the actual running of schools to the interests represented by the Patron and the Manager.””

6.6 There is no effective remedy in Ireland to vindicate any of the rights guaranteed under the European Convention as our education system is publicly funded but essentially private and the state does not see itself as having any responsibility to protect the human rights of atheist and secular families in the education system.

6.7 It is clear from the Action Plan ⁹ that the State submitted to the Council of Europe that it intends to confine the right to an effective remedy to Article 3 of the European Convention.

6.8 Atheist and secular parents in Ireland have no effective remedy to vindicate our rights under Article II of Protocol 1, Article 8 and Article 9 of the European Convention.

6.9 This can only apply to rights guaranteed under the ICESCR as well.

6.10 The recent response from the Minister regarding religious discrimination in access to schools shows clearly that the Irish Constitution is incompatible with the rights guaranteed under the ICESCR.

7. Conclusion

7.1 The Irish State has no plans to adopt comprehensive anti-discrimination legislation to include all the grounds referred to in article 2, paragraph 2, of the Covenant.

7.2 The Minister for Education & Skills Jan O'Sullivan and Aodhan O'Riordain Minister of State at the Dept of Justice & Equality have both claimed recently that a Referendum will be needed to remove discrimination in our education system.

7.3 Ireland's anti discrimination laws, and now - according to the Government - our Constitution, are not compatible with the ICESCR, and there is no effective remedy through the courts to vindicate the rights guaranteed by the ICESCR.

⁹ <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2684500&SecMode=1&DocId=2230558&Usage=2>