

OBLIGATORY CHRISTIAN OATH-TAKING FOR PUBLIC OFFICE

Professor Alison Mawhinney
PhD (Queen's University Belfast) LLM (Essex) BA Hons (Trinity College Dublin)
Professor in Human Rights Law, Bangor University
May 2022

Selected relevant publications

- Mawhinney A (2016) 'Coercion, oaths and conscience: conceptual confusion in the right to freedom of religion or belief' in Cranmer F et al (eds) *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* Cambridge University Press, 205-218
- Mawhinney A (2016) 'Claims of Religious Morality: The Limits of Religious Freedom in International Human Rights Law' 10 (2) *Law and Ethics of Human Rights* 341-365
- Mawhinney A (2015) 'The Right to Freedom of Religion or Belief: Norms and Compliance' in S Egan (ed) *International Human Rights: Perspectives from Ireland* (Bloomsbury Press) 267-282
- Mawhinney A (2015) 'International human rights law: its potential and limitations in effecting change to religious freedom in Irish Schools' *Journal of Intercultural Studies*, 291-305
- Mawhinney A (2015) 'Religion in Schools: A Human Rights Contribution to the Debate' in L Beaman and L Van Arragon (eds) *Whose Religion? Education about religion in public schools* (BRILL/Martinus Nijhoff)
- Mawhinney A. & Niens U., Richardson N., Chiba Y. (2013) 'Acculturation and religion in schools: the views of young people from minority belief backgrounds' *British Educational Research Journal* DOI: 10.1002/berj.3016
- Mawhinney A. & Niens U., Richardson N., Chiba Y. (2012) 'Opting out or opting in? Conscience clauses and minorities' 35 (3) *British Journal of Religious Education* 236-50
- Mawhinney A. (2012) 'A discriminating education system: religious admission policies in Irish schools and international human rights law' 20(4) *International Journal of Children's Rights* 603-623
- Mawhinney A. (2012) 'Crucifixes, classrooms and children: a semiotic cocktail'. In *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*. Temperman J. (ed) (Leiden: BRILL/Martinus Nijhoff, 2012) 93-112
- Mawhinney A. & Niens U., Richardson N., Chiba Y. (2012) 'Religious education and Religious Liberty: Opt-outs and Young People's Sense of Belonging'. In *Law, Religious Freedoms and Education in Europe*. Hunter-Henin, M. (ed) (London: Ashgate, 2012)
- Mawhinney A. & Griffiths, I. (2011) 'Ensuring others behave responsibly: Giddens, governance and international human rights law' 20 *Social and Legal Studies* 481-498
- Mawhinney A. (2009) *Freedom of Religion and Schools: the Case of Ireland* (VDM Verlag, Saarbrücken)
- Mawhinney A. (2007) 'Freedom of religion in the Irish primary school system: a failure to protect human rights?' 3 *Legal Studies* 379

Background

1. The Constitution of Ireland obliges judges¹, members of the Council of State² and the President³ to take Christian oaths.
2. In the case of a judge, the Constitution is particularly explicit in stating that 'Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office.'⁴

Response of the Human Rights Committee

3. At Ireland's first Periodic Review in 1993, the Committee identified the compulsory nature of Christian oaths for public office as 'a principal object of concern'.
4. At each review since (2000, 2008, 2014), the Human Rights Committee has criticised Ireland for its exclusion of non-Christians from some of the most important public positions in the country.
5. During this 29-year period, it has urged Ireland to undertake reform measures.
6. To date Ireland has declined to take action.

7. In 2014, the Committee's Concluding observations noted that:

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.

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.⁵

8. In this Concluding Observation, the Committee made clear that Ireland must urgently reform its Constitution and to do so in a manner that protects against compelling an individual to reveal publicly their religion or belief system contrary to Article 18 of the Covenant.

¹ Constitution of Ireland 1937, Article 34(5)(1): Every person appointed a judge under this Constitution shall make and subscribe the following declaration: "*In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.*"

² Constitution of Ireland 1937, Article 31(4): Every member of the Council of State shall at the first meeting thereof which he attends as a member take and subscribe a declaration in the following form: "*In the presence of Almighty God I do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State.*"

³ Constitution of Ireland 1937, Article 12(8): The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration: "*In the presence of Almighty God I do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me.*"

⁴ Article 34(5)(4).

⁵ Concluding observations on the fourth periodic report of Ireland, CCPR/C/IRL/CO/4, para 21.

9. Currently, the President must take the oath in public, the Chief Justice before the President, the other judges in open court, and members of the Council of State must do so at a meeting of the Council.
10. Hence, to satisfy the 2014 recommendation of the Committee and to protect the standards guaranteed by Article 18, Ireland must amend its constitution to either (a) provide solely a non-religious affirmation or (b) offer a choice between a religious oath and a non-religious affirmation. In the latter case, an individual must make this choice and take the oath/affirmation in a private and confidential manner.

Fifth Periodic Report of Ireland

9. In its List of Issues document, the Human Rights Committee requested the following information:

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.⁶

11. Ireland gave the following information in response to the above request.

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.

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 CCPR/C/IRL/Q/5, para 20

Commentary on Ireland's response

12. Ireland's response is inaccurate and unhelpful in three key respects and suggests an attempt to obfuscate its lack of action in responding to the Committee's recommendation.

13. These inaccuracies are now examined in turn.

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

In July 2012, the Government Cabinet approved, in principle, proposals for a number of major reforms to the structure of the court system. This reform package would ultimately require a referendum on Article 34 of the Constitution. As part of this package the Government agreed to consider an amendment to the judicial oath: *'consideration will be given to adding a secular oath as an optional alternative to the current form of judicial declaration contained in Article 34.5.'*⁷

It may be noted that the Government did not make a commitment to amending Article 34(5) - simply to give *'consideration'*. Further, oaths for members of the Council of State and the Presidential office were not included in this consideration.

The matter of the judicial oath was *not* referred to the Constitutional Convention. The Constitutional Convention met for the first time in December 2012.⁸ Its Terms of Reference (as approved by the Parliament in July 2012) did not direct the Convention to consider the question of obligatory Christian oath-taking (for the judiciary, members of Council of State or President) in the Constitution.⁹ The Constitutional Convention completed its work in March 2014 without consideration of these constitutional provisions.¹⁰

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

This statement is irrelevant to the question of whether the Government has taken any action in response to the Committee's recommendation.

It is, in any case, inaccurate. In February 2014, members of the Constitutional Convention were asked to choose up to five issues for constitutional reform, which they felt should be prioritised for consideration by the Government, the Oireachtas or any future Convention. Of these Convention members, 27% felt issues related to the separation of church and state merited such consideration.¹¹

⁷ <https://www.justice.ie/en/JELR/Pages/PR12000214>

⁸ https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitutional_convention.html

⁹ https://www.constitutionalconvention.ie/Documents/Terms_of_Reference.pdf

¹⁰ Ninth Report of the Convention on the Constitution Conclusions and final recommendations <https://www.constitutionalconvention.ie/AttachmentDownload.ashx?mid=55f2ba29-aab8-e311-a7ce-005056a32ee4>

¹¹ Ibid, page 10

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

The 35th Amendment of the Constitution (Separation of Church and State) Bill 2017 was a Private Member's Bill, not a Government Bill.

It was introduced on the initiative of three members from the 'People before Profit/Solidarity party on 13 July 2017.

The bill lapsed with the dissolution of the Parliament ahead of elections in 2020. It had by then only reached the 'First Stage', that is, it had been presented to the House in a short five-minute proceeding. No debates had therefore taken place.

The Bill had proposed a single non-religious affirmation for the judiciary, the President and members of the Council of State as follows:

Amendment of Article 12

3. Section 8 of Article 12 of the Constitution shall be amended by deletion of:

- (a) "In the presence of Almighty God" and "May God direct and sustain me." from the English language text, and
- (b) "I láthair Dia na nUilechumhacht," and "Dia do mo stiúradh agus do mo chumhdach." from the Irish language text.

Amendment of Article 31

4. Section 4 of Article 31 of the Constitution shall be amended by the deletion of:

- (a) "In the presence of Almighty God" from the English language text, and
- (b) "I láthair Dia na nUilechumhacht," from the Irish language text.

Amendment of Article 34

5. Subsection 1 of section 6 of Article 34 shall be amended by the deletion of:

- (a) "In the presence of Almighty God" and "May God direct and sustain me." from the English language text, and
- (b) "I láthair Dia na nUilechumhacht" and "Dia do mo stiúradh agus do mo chumhdach." from the Irish language text.

Given that the Bill is a Private Member's Bill, rather than a Government Bill, opportunities for its reintroduction are very limited in the current Parliament.

Furthermore, and critically, it is not at all clear whether the Government would support it and whether they would use their majority to ensure its passage through the Parliament and thereafter ensure that its proposed amendments were subsequently put to a referendum.

The European Court of Human Rights: *Shortall and Others v. Ireland* (2021)¹²

14. The unwillingness of the Government to amend the current constitutional provisions in line with the Human Rights Committee's recommendation is further highlighted by the Government's stance in a recent case taken to the European Court of Human Rights on the matter of oath-taking.
15. In this case four applicants - prominent in Irish public life - complained under Article 9 that the requirement to take a religious oath to hold the position of president or to be a member of the Council of State breached their right to freedom of thought, conscience, and religion.
16. The Court declared the applications inadmissible, finding that the applicants had failed to provide reasonable and convincing evidence that they were at risk of being directly affected by these requirements and so could not claim to be victims of a violation of the Convention.
17. However, in its judgment which referenced the recommendations of the Human Rights Committee, the Court noted that while Contracting States enjoy a wide margin of discretion in questions concerning the relationship between States and religion, it nevertheless went hand in hand with European supervision. The reference by a State to a tradition could not relieve it of its obligation to respect the rights and freedoms enshrined in the Convention.¹³
18. In its submission, the Irish Government had argued that applicants' rights to freedom of thought, conscience and religion were not breached.¹⁴ It argued that the oaths were "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". It further argued that: "In line with the court's case law, pluralism, tolerance and broadmindedness – including respect for religious diversity – must be regarded as conducive to public order in a democratic society."
19. The arguments put forwarded by Ireland directly reject the views and recommendations made by the UN Human Rights Committee over the past nearly 30 years. They are indicative of the Government's intransigence and unwillingness to take measures to protect the right to freedom of thought, conscience and religion, and the right to non-discrimination as guaranteed by the International Covenant on Civil and Political Rights.

¹² [Shortall and Others v. Ireland](#) (Application 50272/18) November 2021

¹³ Ibid, para 60.

¹⁴ <https://www.irishtimes.com/news/crime-and-law/challenge-to-presidential-oath-must-be-thrown-out-government-claims-1.4637275>

Questions for the Irish Government Delegation

1. Why did the Government argue in the recent case of *Shortall and Others* that the current constitutional provisions demanding Christian oaths for the key public positions was *not* in breach of freedom of thought, conscience and religion standards given that the Human Rights Committee has - since 1993 - held that these provisions endanger the rights contained in Articles 2, 18 and 26 of the Covenant?
2. Will the Government commit to a time frame for facilitating, as a matter of priority, the reintroduction of the 35th Amendment of the Constitution (Separation of Church and State) Bill and, *critically, ensure the bill is given its full support in Parliament and its contents subsequently put to a referendum as soon as possible?*