



AN COIMISIÚN UM CHEARTA DUINE
IRISH HUMAN RIGHTS COMMISSION

DISCUSSION PAPER

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Religion and Education: A Human Rights Perspective
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Introduction

1. Ireland's demographics have changed significantly in the past 15 years. According to the most recent statistics, while the majority of persons define themselves as belonging to the main Christian Churches (namely Roman Catholic or Church of Ireland), a significant number of persons also now define themselves as being of no belief or of being of Islamic, Jewish, Buddhist, Hindu or other belief.
2. This discussion paper explores the place of religion in primary and post-primary schools in the State.¹ It gives an overview of existing law and practice in the area and sets out both the Constitutional and international human rights standards on these points. It concludes with posing a number of questions as to whether the law and practice in the State in relation to the provision of education fully meets human rights standards.

Background

3. There are currently 3,295 primary schools (of which 3,165 are national schools and 130 special schools) in Ireland, 97% of which have Roman Catholic or Church of Ireland ethos.² This means that the Patron of such

¹ See *The opt-out clause: Imperfect protection for the right to freedom of religion in schools*, Alison Mawhinney, QUB, 2005, for a full discussion of the right to freedom of religion and the opt out model in the Irish education system

² Source: *Concluding observations of the Committee on the Elimination of racial Discrimination: Ireland* 14/04/2005 CERD/C/IRL/CO/2. See also www.rte.ie/news/2010/0305/education.html and Educate Together website, www.educatetogether.ie. According to a recently produced report on the Department of Education and Science website, the figure is 97%: see *Information on Areas for Possible Divesting of Primary Schools*, www.education.ie, accessed 13 August 2010. A Report published by the Department of Education on 3 August 2010, indicates the following break down for primary schools in Ireland in the 2009/2010 school year: CATHOLIC: 2888 schools, 91.25% (% of total), CHURCH OF IRELAND: 181 schools 5.72%, PRESBYTERIAN: 14 schools 0.44%, METHODIST 1 school 0.03%, JEWISH 1 school 0.03%, INTER-DENOMINATIONAL 8 schools 0.25%, MUSLIM 2 schools

schools is often a Roman Catholic Bishop and there is Church representation on the Boards of Management of each school. Although all non private primary schools in the State are referred to as national schools, they are in the vast majority of cases owned and run by the Roman Catholic Church.³

4. The State has traditionally provided funding for national schools, and prescribed a certain minimum curriculum to be followed. The State, in the form of the Department of Education and Skills (“the Department”), takes no direct role in the management of such schools which are largely self governing. This de facto situation was only properly legislated for in 1998.

Education Act 1998

5. This Act applies equally to primary and post primary education. The long title to the Act states that it is for the purpose of the provision of education for everyone in the State. It goes on to explain that the Act has the aim of ensuring that:

“... the education system is accountable to students, their parents, and the State for the education provided, respects the diversity of values, beliefs, languages and traditions in Irish society and is conducted in a spirit of partnership between schools, patrons, students, parents, teachers and other school staff, the community served by the school and the State...”

6. The functions of the Minister for Education and Skills set out in the Act include the following matters:
 1. to ensure that each person has support services and a level of education suitable to their needs;
 2. setting education policy and,
 3. providing funding, and monitoring the quality and effectiveness of the education system.⁴
7. In carrying out those functions, however, the Minister is required to have regard to:

0.06%, MULTI-DENOMINATIONAL 69 schools, 2.18%, QUAKER 1 school 0.03% Total 3165 Schools. *Information on Areas for Possible Divesting of Patronage of Primary Schools.* See also www.education.ie/servlet/blobServlet/stat_web_stats_09_10.pdf

³ For a brief history of the Irish primary education system see; *The multi-denominational experience*, Áine Hyland, Irish Education Studies, 8 1:1.

⁴ Section 7, Education Act 1998.

“...the practices and traditions relating to the organisation of schools or groups of schools existing at the commencement of this Part and the right of schools to manage their own affairs in accordance with this Act and any charters, deeds, articles of management or other such instruments relating to their establishment or operation.”

8. In relation to the functions of schools, section 9(d) of the Act states that schools shall:

“promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school.”

9. In this regard the Minister has a largely supervisory role in relation to schools, and takes no direct role in relation to how each school is managed and in particular it is left to each school which particular ethos or character it wishes to adopt, and how this is reflected in the way the school is run.
10. The Board of Management of each school is accountable to the school patron to uphold the characteristic spirit of the school as determined by, *inter alia*, the moral, religious and spiritual values which inform the character and objectives of the school.⁵

Rules of National Schools and the Primary School Curriculum

11. The Rules of National Schools were promulgated by the Department in 1965 and have been amended on a number of occasions since. The rules are comprehensive in dealing with all aspects of the running of national schools, but do not have a legislative basis. Nonetheless they are adhered to by every State funded national school in the country. In addition to the Education Act 1998, the Rules deal with such matters as Patronage and Management, the physical structure of schools and equipment, the school year, staffing and so on. Adherence to the Rules is required in order for each school to draw down funding to pay staff and teachers' salaries.⁶
12. In the context of religious education it is noted that in the preface to the Rules the relevant provisions of the Constitution in relation to education are set out, and there is acknowledgment of the Constitutional right of parents to withdraw their children from religious instruction in a particular school. The Rules go on to state that:

“In pursuance of the provisions of these Articles the State provides for free primary education for children in national schools, and

⁵ Section 15(2)(a) Education Act 1998.

⁶ See rules 15, 16 and 17 of the Rules of National Schools.

gives explicit recognition to the denominational character of these schools.”

13. The integrated curriculum is given statutory footing in section 15(2)(b) of the Education Act 1998 which provides:

“(2) A board shall perform the functions conferred on it and on a school by this Act and in carrying out its functions the board shall—

do so in accordance with the policies determined by the Minister from time to time,

uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school, and at all times act in accordance with any Act of the Oireachtas or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school.”

14. Section 9(d) provides:

“9.—A recognised school shall provide education to students which is appropriate to their abilities and needs and, without prejudice to the generality of the foregoing, it shall use its available resources to—

(d) promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school,”

15. Also relevant in this regard is Rule 68 which states:

“Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject-matter, God’s honour and service, includes the proper use of all man’s faculties and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school. The teacher should constantly inculcate the practice of charity, justice, truth, parity, patience, temperance, obedience to lawful authority, and all the other moral virtues. In this way he will fulfil the primary duty of an educator, the moulding to perfect form of his pupils’ character, habituating them to observe, in their relations with God and with their neighbour, the laws which God, both directly through the dictates of natural reason and through

Revelation, and indirectly through the ordinance of lawful authority, imposes on mankind.“

16. This rule with its exhortation for religion to vivify the whole work of the school may be interpreted as allowing religious education to permeate the school day beyond mere formal religious instruction. Further the Primary School Curriculum⁷ adopted by the Department in 1999 provides guidance to schools in relation to the integration of learning across the curriculum:

“The Integration of Learning:

For the young child, the distinctions between subjects are not relevant: what is more important is that he or she experiences a coherent learning process that accommodates a variety of elements. It is important, therefore, to make connections between learning in different subjects. As they mature, integration gives children’s learning a broader and richer perspective, emphasises the interconnectedness of knowledge and ideas and reinforces the learning process.”

17. The Primary School Curriculum also emphasises the importance of pluralism in schools:

“Pluralism:

The curriculum has a particular responsibility in promoting tolerance and respect for diversity in both the school and the community. Children come from a diversity of cultural, religious, social, environmental and ethnic backgrounds, and these engender their own beliefs, values, and aspirations. The curriculum acknowledges the centrality of the Christian heritage and tradition in the Irish experience and the Christian identity shared by the majority of Irish people. It equally recognises the diversity of beliefs, values and aspirations of all religious and cultural groups in society.”

18. It might be argued that the centrality given to the “Christian heritage and tradition in the Irish experience”, in the Curriculum seems to be somewhat at odds with the pluralist ethos also promoted by the Curriculum. Further the Curriculum refers to the “integration of learning” as referred to above. The ‘integrated curriculum’ allows the various

⁷ *The Primary School Curriculum*, Department of Education, Dublin 1999. The original Primary School Curriculum was published in 1971 by the Department of Education and provided for an integrated curriculum and advised that.... “ the separation of religious and secular instruction into differentiated subject compartments serves only to throw the whole educational function out of focus...The integration of the curriculum may be seen in the religious and civic spirit which animates all its parts.”

elements of the curriculum to be taught harmoniously without creating rigid barriers between its various elements. However in the context of religion this would allow religious instruction to be incorporated into the teaching of other subjects. It is also noted that the Primary School Curriculum leaves it to each individual school to design and deliver its own religious curriculum.

Complaints Mechanisms

19. Under section 14 of the Education Act 1998 the Board of Management of a school is charged with the management of the school. It is also the body which primarily deals with complaints concerning schools, which under existing complaints mechanisms, relate primarily to complaints against teachers rather than the wider issues canvassed in this paper.
20. In Guidance issued on its website, the Department states that:

“Under the 1998 Education Act, the Minister for Education and Skills provides funding and policy direction for schools. Neither the Minister nor the Department have legal powers to either:

- *instruct schools to follow a particular course of direction with regards to individuals complaint cases, or*
- *to investigate individual complaints*

While the Department does not pass judgment on individual complaints it can clarify for parents and pupils how their grievances and complaints against schools can be progressed. If you require any further clarification please contact Parents’ and Learners’ Section, Schools’ Division, Department of Education and Skills...”.⁸

21. Under this Guidance document, a complaint can only be made against a teacher or other staff member of the child’s school. The document states:

*“The guidance provided on this page does **not** apply to complaints in relation to actions or decisions by schools on allegations of child protection, suspensions, permanent exclusions, refusals to enrol and those decisions which may discriminate against a child. Guidance to parents on these issues is set out overleaf.”*

22. In relation to these matters, the Guidance document states that child protection issues should be referred to the Health Service Executive and/ or Gardaí; that complaints concerning a Board of Management’s

⁸ *Brief Guidance for Parents who wish to make a Complaint about a Teacher or other staff members of a School*, available at www.education.ie/servlet/blobServlet/primary_complaints.doc

decision to suspend, permanently exclude or refuse to enrol a child should be made to the Department under Section 29 of the Education Act 1998, while discrimination complaints should be made to the Equality Tribunal. It will be noted that issues concerning religious instruction in schools are not dealt with in the foregoing except in relation to complaints against teachers or other staff members, or except in so far as they may come within the terms of the Equal Status Acts 2000-2008.

23. In terms of complaints brought by parents against teachers, the Guidance document appends two documents: the first is a procedure agreed between the Irish National Teachers' Organisation and the Catholic Primary School Managers' Association in 1993 and the second is a procedure (Code of Practice) agreed between the Association of Community and Comprehensive Schools and the Association of Secondary Teachers Ireland and the Teachers' Union of Ireland.
24. Complaints relating to schools are thus primarily determined at school level, with teachers unions and some school management bodies agreeing to certain procedures which should apply when investigating and resolving complaints at a local level, with the Department only providing clarification through its Parents' and Learners' Section, Schools' Division, rather than taking any direct role in the resolution of such disputes.
25. In terms of general applicability, however, it will be observed that these complaints procedures do not cover all primary or post-primary schools in the State. The situation pertaining in other schools not covered by these agreements is thus unclear.
26. The Guidance document also states that:

*“the Office of the Ombudsman for Children may independently investigate complaints about schools recognised with the Department of Education and Skills, **provided the parent has firstly and fully followed the school’s complaints procedures.** The key criterion for any intervention by the Ombudsman for Children is that a child has, or may have been negatively affected by the action of a school.” (emphasis retained)*
27. This would refer to the situation where a person who has made the complaint remains unhappy with the decision of the Board of Management and wishes to complain of mal-administration to the Ombudsman for Children, an independent statutory body established under the Ombudsman for Children Act 2002 charged with promoting the rights of children and young people.⁹

⁹ See www.oco.ie

The Constitution

28. Article 42.1 of the Constitution states:

“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 to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.”

29. Article 43.4 further provides:

“The State shall provide free primary education....with due regard, however for the rights of parents, especially in the manner of religious and moral formation.”

30. Finally Article 44.2.4 states:

“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 in that school.”

31. In *Crowley v Ireland* [1980] IR 102, the Supreme Court found that the management of primary schools along denominational lines was constitutionally valid.¹⁰ However, it noted that there is a constitutional right for parents to withdraw their children from religious instruction.
32. In light of the guarantee under Article 44.2.4 there is a provision in the Education Act which states that a student shall not be required to attend instruction in any subject which is contrary to the conscience of the parent of the student.¹¹ This is an entitlement that every national school must respect and facilitate.
33. The leading Irish case in relation to religious education in schools is the decision of the Supreme Court in *Campaign to Separate Church and State Ltd v The Minister for Education* [1998] 3 IR 321. The case concerned the constitutionality of the State providing funding for school chaplains. The challenge was taken pursuant to Article 44.2.2 which prohibits the State from endowing any religion, but Barrington J also considered Article 42 of the Constitution, and found that there was a positive duty on the State to assist parents, through the education system with the religious and moral formation of their children:

¹⁰ See also, *JM Kelly: The Irish Constitution*, Hogan and Whyte, 4th Ed, at page 1941.

¹¹ Section 30(2)(e) Education Act 1998. In the case of a student over eighteen years of age, the student may make this decision.

“Article 42.2 prescribes that the parents shall be free to provide ‘this education’ (ie. 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 44.2.4 which prescribes 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.’

The Constitution therefore distinguishes between religious ‘education’ and religious ‘instruction’ – the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree, by the religious ‘ethos’ of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

34. This analysis suggests, however, that under the Constitution there is a distinction between “religious education and moral formation” which is a very broad all encompassing term and the much narrower statutory formulation of “instruction” which is used as the basis of exemptions under the 1998 Act, which appears to be limited to formal classes in any subject including religion.

European Convention on Human Rights (ECHR)

35. Article 2 of Protocol 1 of the ECHR provides:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

36. In *Kjeldsen, Madsen and Pedersen v Denmark* [1979] 1 EHRR 711, the ECtHR found that this provision prohibited the State from pursuing an aim of indoctrination that might be considered as not respecting parents’

religious and philosophical convictions (although in that case it did not prohibit the State providing for compulsory sex education in schools). In *Campbell and Cosans v the United Kingdom* [1982] 4 EHRR 293, it was found that a parent's view on corporal punishment could amount to philosophical conviction for the purpose of the Article. The Court, in considering a policy of gradual removal of corporal punishment put forward by the UK government also considered what was meant by "respect" in the Article and found that it created an absolute right rather than one that had to be balanced against the rights of others or which could be gradually achieved:

*"Whilst the adoption of the policy referred to clearly foreshadows a move in the direction of the position taken by the applicants, it does not amount to 'respect' for their convictions. As is confirmed by the fact that, in the course of the drafting of Article 2 (P1-2), the words 'have regard to' were replaced by the word 'respect' (see documents CDH (67) 2, p. 163) the latter word means more than 'acknowledge' or 'taken into account'; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see mutatis mutandis, the Marckx judgment of 13 June 1979, series A no. 31, p. 15, par. 31). This being so, the duty to respect parental convictions in this sphere cannot be overridden by the alleged necessity of striking a balance between the conflicting views involved, nor is the Government's policy to move gradually towards the abolition of corporal punishment in itself sufficient to comply with this duty."*¹²

37. In the more recent case of *Folgerø v Norway* the ECtHR considered the right to education in relation to the curriculum of religious education provided in schools in Norway.¹³ The particular curriculum adopted imparted knowledge of a wide range of religions but placed emphasis on the Lutheran religion which was the most common religion in the State, and also included an element of instruction in religious practice, over and above mere knowledge. Although parents were entitled to withdraw their children from any part of the curriculum that was contrary to their own conscience and convictions, the system of exemption was very onerous and complicated and involved the parents giving the school information about their personal religious and philosophical convictions, to justify seeking an exemption.
38. The Court first pointed out that the right to education had to be interpreted in light of Article 8 (respect for private and family life) and Article 9 (Right to freedom of conscience and religion) and made the following general observations in relation to Article 2 of Protocol 1:

¹² Para 37

¹³ European Court of Human Rights, Grand Chamber Judgment, 29 June 2007.

- The right to education under Article 2 of Protocol 1 is primarily one that must be upheld by the State and the State is the primary duty holder in this regard. Further the Court has indicated that the term “respect” in relation to the rights of parents denotes not only a negative undertaking not to interfere with the right but also incorporates a positive obligation on the State to vindicate that right.
- Article 2 of Protocol 1 does not distinguish between State and private teaching. Therefore the right is the same irrespective of how, or by whom, the right to education is satisfied.
- Article 2 of Protocol 1 does not permit a distinction to be drawn between religious instruction and other subjects, and requires the State to respect parents’ convictions, be they religious or philosophical, throughout the entire State education programme.
- Parents have the primary responsibility for the education and teaching of their children, but in discharging this duty they are entitled to require the State to respect their religious and philosophical convictions, and this right is linked to the State’s responsibility in relation to the provision of education.
- While Article 2 of Protocol 1 does not prohibit the State from imparting through education knowledge of a religious or philosophical kind, the State must ensure that such information is conveyed in an objective, critical and pluralist manner. In particular the State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. The European Court has stated this is a limit that must not be exceeded.
- The Court has stated that even where violation of the rights under Article 2 of Protocol 1 arise at the level of the individual school, nonetheless the competent authorities (the State) must take the utmost care to see that parents’ religious and philosophical convictions are not disregarded by carelessness, lack of judgment or misplaced proselytism.

39. This approach to religious education was also followed in the subsequent case of *Hasan and Eylem Zengin v Turkey*.¹⁴

¹⁴ *Hasan and Eylem Zengin v Turkey*, Judgment, 9 January 2008.

Convention on the Rights of the Child

40. Article 14 provides:

“1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

41. The Committee on the Rights of the Child has recognised that freedom of religion in the context of compulsory education can be an important issue for children. In its first General Comment on the aims of education, the Committee emphasised that “children do not lose their human rights by virtue of passing through the school gates” and highlighted the importance of schools respecting children’s participation rights.¹⁵

Convention on the Elimination of All Forms of Racial Discrimination

42. In its relevant part Article 5 of CERD provides:

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

....

(d) Other civil rights, in particular:

....

(vii) The right to freedom of thought, conscience and religion;

(e) Economic, social and cultural rights, in particular:

.....

(v) The right to education and training;”

43. In the Concluding Observations of the Committee on the Elimination of Racial Discrimination on Ireland issued in 2005 it was stated:

¹⁵ Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, pp 256 and 257.

“18. The Committee, noting that almost all primary schools are run by Catholic groups and that non-denominational or multid denominational schools represent less than 1 per cent of the total number of primary education facilities, is concerned that existing laws and practice would favour Catholic pupils in the admission to Catholic schools in case of shortage of places, particularly in the light of the limited alternatives available (art. 5 (d) (vii) and 5 (e) (v)).

The Committee, recognizing the ‘intersectionality’ of racial and religious discrimination, encourages the State party to promote the establishment of non-denominational or multi-denominational schools and to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) to schools is concerned.”

International Covenant on Civil and Political Rights

44. Article 18 of the ICCPR provides:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

45. The Human Rights Committee in its General Comment on this provision stated:

“The Committee is of the view that Article 18(4) permits public school instruction in subjects such as general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure their children receive religious and moral education in conformity with their own convictions, set forth in Article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in Article 18(1). The

Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.”¹⁶

46. In the case of *Unn and Ben Leirvag et al v Norway*, the Human Rights Committee found there was a breach of Article 18 (4).¹⁷ The Committee stated that Article 18 covered not only the protection of traditional religions but also philosophies of life. It was also stated that under Article 18(4) religious education was permissible in schools if “given in a neutral and objective way” and provided that non-discriminatory exemptions or alternatives that would accommodate the wishes of parents were made available. The Committee also found that having partial exemption arrangements did not satisfy the needs of the applicants. The CKREE (religious curriculum) was based on religious instruction and the partial exemption was impossible to implement in practice as, by having a subject that combined religious knowledge with the practicing of a particular religious belief, without a total exemption scheme, put a considerable burden on parents who wished to ensure that the religious and moral education of their children was in conformity with their own convictions.

Human Rights Standards

47. The Right to Education (Article 42, the Constitution, Article 2 of Protocol 1, ECHR, the Right to Freedom of Thought, Conscience and Religion (Article 44, The Constitution, Article 9, ECHR, Article 18, ICCPR, Article 14, CRC), the Right to Freedom from Discrimination (Article 5, CERD, Article 14, ECHR).

Analysis

48. Ireland effectively has a system of almost entirely denominational primary education. For much of the history of the state this has been a largely unchallenged reality. In this regard almost all national schools in Ireland have a Roman Catholic or Church of Ireland ethos, with just over 2% of schools being inter-denominational or multi-denominational and none that are non-denominational. National schools are largely self governing, subject to compliance with the Education Act 1998, which reinforces the right of individual schools to have their own characteristic spirit and objectives, including a denominational ethos. The Rules for National Schools and the Primary School Curriculum encourage integration of the curriculum and gives sanction for religion to “vivify” the whole day of the school.
49. A very practical issue relates to access to non-denominational schools particularly in rural areas where a child cannot access a non-

¹⁶ Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev 5, p. 145.

¹⁷ *Unn and Ben Leirvag et al v Norway*, Communication No. 1155/2003 [UN Doc. CCPR/C/82/D/1155/2003].

denominational school but must attend a religious ethos school. For example, what steps must be taken to secure appropriate education where parents wish for no religious instruction for their children in school?

50. While provision is made for the right of parents to withdraw their children from any instruction which conflicts with their own convictions, including religious convictions, it does not appear, in light of the suggestion that religion may informally permeate the school day in denominational schools (to a greater or lesser extent), that this right to withdraw pupils from specific classes will necessarily insulate such pupils from receiving religious education informally during the rest of the school day.
51. The Constitutional protection under Article 42 was not robustly applied in the *Campaign to Separate Church and State* case. However *Hogan and Whyte* criticise the approach taken in that case and suggest that Article 42 should be read as a restraint on State action rather than an authorisation for positive action in relation to providing for the religious and moral education of children.¹⁸ Based on this criticism of Barrington J's judgment, it is arguable that the statutory protection provided under the Education Act 1998 may not go far enough to vindicate the constitutional rights of parents who do not wish their children to be educated in a religious ethos.
52. The ECtHR has been very clear in stating that the State is the primary duty holder in relation to the right to education and in so far as the State takes on an educational function (in Ireland in the form of funding and setting the curriculum and general educational policy) then it must do so in a manner that ensures that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is expressly forbidden from pursuing an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions.
53. The existing Supreme Court interpretation of Article 42 of the Constitution, the National School Rules, and the integration of the curriculum endorsed by the Primary School Curriculum suggest that Ireland may not be in compliance with the requirements of the Article 1 of Protocol 2 of the ECHR.
54. For similar reasons the State may not be in compliance with its obligations under the ICCPR, the CRC and ICERD, in so far as the statutory option of withdrawing children from religious instruction classes may not be an adequate alternative to parents where a) this is not an actual or reasonable option in a given school and there is no

¹⁸ Ibid, at page 1942.

alternative school in a given catchment area or b) while a child may be excused from a religious class, religious instruction will still occur in the school contrary to the right to freedom of thought, conscience and religion of the child/ family.

Appendix

ECtHR decision in *Lautsi v. Italy*

In *Lautsi v. Italy*¹⁹ the European Court held that the freedom not to believe in any religion was not limited to the absence of religious education, but rather extended to practices and symbols which expressed a belief, a religion, or atheism. This freedom was found to deserve “special protection” if it was the State which expressed a belief and dissenters could only avoid being placed in a situation by “making disproportionate efforts and acts of sacrifice”. Further the Court found that there was an obligation on the State to refrain from imposing even indirectly, beliefs in places where people are dependant on it or in places where they are vulnerable. To this end the Court acknowledged the particular vulnerability of children within the school system.²⁰ Furthermore, in considering whether the exposure of crucifixes in classrooms was objective, critical and pluralistic the European Court took into account the particular nature of the religious symbol and its impact on students from a young age, especially the children of the applicant. The European Court considered that in countries where the vast population of the country belongs to a particular religion, the manifestation of the rites and symbols of this religion without restriction of place and manner may constitute a pressure on students who do not practise that religion or those who adhere to another religion.²¹ The European Court stated:

*The State is obliged to religious neutrality in the context of compulsory public education where attendance is required irrespective of religion and must seek to instill in students critical thinking.*²²

This case has now been referred (appealed) to the Grand Chamber and Judgment is awaited.

¹⁹ *Lautsi v Italy*, (application No. 30814/06) European Court Judgment of 3 November 2009.

²⁰ *Ibid*, para 50.

²¹ *Ibid*, para 56.

²² *Ibid*.

Questions for Consideration

Legitimate questions arise in relation to the system of religious education/ instruction in Ireland and its adherence to relevant human rights standards. A number of questions are posed below for discussion purposes, but by no means are meant to be exhaustive of the issue.

Structure: The Patronage System

The State remains formally neutral in matters between different religious denominations, most notably as set out in the Education Act 1998 which gives legislative status to school “patrons” (to whom Boards of Management are accountable for the upholding of the ethos or “characteristic spirit” of schools).

Are the procedures in place sufficient to respect human rights? Is it possible for the State to meet its human rights obligations by formally providing funding on an equitable basis to denominational, multi-denominational and non-denominational schools, or is more required, taking into account the number of denominational schools in the State today?

Would providing effective access to either denominational or secular education to families based upon their preference satisfy all the human rights concerns set out in this paper?

The Education Act 1998 sets out how schools operate an internal complaints system. Is this process adequate and effective, taking into account the time-sensitivity which may be involved in resolving complaints?

Access to a school of one’s choice

Both the Constitution, the ECHR and the ICCPR provide for respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, whereas the emphasis in the CRC is on the freedom of religion of the child, with parental direction consistent with the child’s evolving capacities, particularly in their teenage years.

How are questions of access, distribution and State funding of schools addressed in the system for recognition of patronage? What procedures are in place to secure the rights explored in this paper?

The information and knowledge conveyed

Should the State ensure that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner in the classroom?

If the State were to require that information about religion be imparted in an objective, critical and pluralistic manner, would this vindicate the right to freedom of thought, conscience and religion of communities and individuals who have a preference for denominational education for their children?

Should the State focus on its duty to respect parents' religious convictions. If so, what precisely does that duty entail for minority children in the existing system which has a high number of denominational schools: a) no change, b) provision of education in the religion of choice, c) an exemption from religious classes only or d) provision of an objective, critical and pluralistic education to students to extend to the general ethos of the school?

This Discussion Paper was launched at the Conference entitled *Religion and Education: A Human Rights Perspective*, at Trinity College Dublin, on Saturday 27 November 2010.

The purpose of the Conference is to open the debate on religion and education from a human rights perspective and to launch a consultation process on the basis of same. As Ireland's national human rights institution, the IHRC is uniquely placed to do this. It does so without adopting definitive stances at this stage on most of the issues canvassed by this paper.

The purpose of the paper is to set out the human rights standards pertaining under the Constitution and international agreements to which the State is a party and on the basis of those standards to elicit responses to a number of questions. On the basis of the feedback received and further analysis, the IHRC will make recommendations to Government pursuant to Section 8(d) of the Human Rights Commission Act 2000 on the measures required for the State to meet its human rights obligations in this area.

Accordingly individuals and organisations are invited to write to the IHRC with views/ comments submissions on the Questions for Consideration by 31 January 2011.

A summary of the submissions received will be made available on the IHRC website early next year and will inform ongoing IHRC consideration of this issue thereafter.

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