

**United Nations Human Rights Council
Universal Periodic Review**

Ireland

Submission of The Becket Fund for Religious Liberty

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The Becket Fund for Religious Liberty is a nonprofit, public interest law firm whose clients have included Buddhists, Christians, Hindus, Jews, Muslims, Sikhs, and Zoroastrians.



United Nations Human Rights Council Universal Periodic Review of Member-State Ireland

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of religious freedom law in Ireland as a contribution to the Universal Period Review of UN member-state Ireland.

1. Legal Framework

1.1. Background

Ireland is organized as a parliamentary democracy, with the Constitution of Ireland as the basic law of the state. It was adopted by plebiscite in 1937. The Constitution outlines what are considered the fundamental rights of the citizen. The definition of rights in the Constitution covers five broad headings: personal rights, the family, education, private property and religion. The Constitution may be amended only by referendum.

1.2. Constitutional guarantees of religious liberty

The Irish Constitution provides for religious freedom largely through the guarantee of ‘personal’ rights. The Constitution guarantees the right to assemble peaceably and without arms, and the right to form associations and unions. Article 44.2 provides that “1. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen. 2. The State guarantees not to endow any religion. 3. The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.”¹ However, the Constitution also provides that [t]he publication or utterance of blasphemous . . . matter is punishable in accordance with law.”²

The Irish Constitution provides that the government shall not interfere with religious denominations: “Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.”³

1.3. International Obligations

As a member of the United Nations, Ireland has agreed to the principles expressed in the Universal Declaration of Human Rights, including the fundamentality of the freedom of religion.⁴ In 1989, Ireland

¹ Ir. Const., 1937, art. 44(2)(1-3), *available at* http://www.taoiseach.gov.ie/attached_files/html%20files/Constitution%20of%20Ireland%20%28Eng%29.htm.

² *Id.* at art. 40(6)(1)(i).

³ *Id.* at art. 44(2)(5).

⁴ Universal Declaration of Human Rights, G.A. Res. 217A, art. 18, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) (“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to

ratified the International Covenant on Civil and Political Rights (ICCPR), which guarantees “the right to freedom of thought, conscience and religion.”⁵ As a member of the Organisation for Security and Cooperation in Europe, Ireland signed the Helsinki Final Act of 1975, which mandates that “participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.”⁶ Ireland is also a member of the European Union and a signatory to the European Convention on Human Rights (European Convention), which likewise recognizes freedom of religion.⁷

2. Legislation and Enforcement

Irish legislation has some commendable provisions for religious liberty. For example, Section 37 of the Employment Equality Act, in accordance with Article 44 of the Constitution, permits religiously affiliated entities such as religious schools to make employment decisions based on core tenets of their faith. This section’s constitutionality was challenged and upheld by the Supreme Court in 1997. Section 37 of The Employment Equality Act permits religious organisations such as schools to employ staff in accordance with their ethos.⁸ However, there are other provisions that directly infringe on or are likely to cause conflict with religious freedom of citizens to express their beliefs peacefully or associate in a meaningful way.

2.1. Blasphemy Law

In 2009, the Irish Parliament passed a law replacing the 1961 Defamation Act, which required a penalty of up to seven years for the crime of blasphemy against any religion.⁹ The 2009 Defamation Act continues to recognize blasphemy as a crime punishable by a fine of up to 25,000 Euros.¹⁰ The law is in contradiction with Article 44 of the Irish Constitution, which provides for “the free profession and practice of religion,” with Article 40 (upon which the law is based), which provides for “[t]he right of the citizens to express freely their convictions and opinions,” and with Ireland’s international commitments. The Universal Declaration of Human Rights (Articles 18 and 19), the European Convention on Human Rights (Article 9), the ICCPR (Articles 18 and 19), and the Helsinki Accords (Article 7) each mandate the ability of individuals to express and manifest their thoughts, ideas, and beliefs without interference from the government.

At the United Nations, Ireland has consistently voted against resolutions on “defamation of religions” presented by the Organisation of Islamic Conference to the Human Rights Council and the General

change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”)

⁵ Article 18 of the ICCPR provides: “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.” G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (Dec. 16, 1966).

⁶ Organisation for Security and Cooperation in Europe (OSCE), Final Act of the Conference on Security and Cooperation in Europe, art. VII, Aug. 1, 1975, 14 I.L.M. 1292, available at <http://www1.umn.edu/humanrts/osce/basics/finact75.htm>.

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, Nov. 4, 1950, Europ. T.S. No. 5 [hereinafter European Convention].

⁸ Employment Equality Act, 1998 section 37 (Act No. 21/1998) (Ir.) available at <http://www.irishstatutebook.ie/1998/en/act/pub/0021/index.html>.

⁹ Defamation Act, 1961 section 13 (Act No. 40/1961) (Ir.) available at <http://www.irishstatutebook.ie/1961/en/act/pub/0040/print.html#sec13>.

¹⁰ Defamation Act, 2009 section 36 (Act No. 31/2009) (Ir.) available at <http://www.oireachtas.ie/documents/bills28/acts/2009/a3109.pdf>.

Assembly because the law protects religious beliefs instead of religious believers, empowers states instead of individuals, and requires the state to make theological decisions about what is orthodox in a religion in order to decide whether a statement is “defamatory.”

Dermot Ahern, the Minister for Justice, announced in March of 2010 that a referendum would be sought on the blasphemy provisions in the Constitution and legislation in Autumn 2010.¹¹ But to date, no steps have been taken towards a referendum and the law remains in place. Thus far there have been no prosecutions under the Defamation Act,¹² despite efforts of an atheist group to test the law by publishing blasphemous statements.¹³

2.2. Civil Partnerships

In 2010, Ireland passed the Civil Partnership Act, recognizing same-sex civil partners and providing them with many of the same rights as married couples.¹⁴ The law provided no exemptions based on religious belief in the provision of goods and services, creating significant potential conflicts between privileges created by same-sex unions and religious liberty.¹⁵ Under the Civil Partnership Act, a civil registrar who declines, based on her religious belief, to perform a civil partnership ceremony, can receive a six month prison sentence, even if another civil registrar is available.¹⁶

In conjunction with other nondiscrimination laws such as the Equal Status Act of 2000,¹⁷ which prohibits discrimination based on civil status, conflict is also likely in the context of private employment law. For example, a religious organization such as a Christian community development charity may wish to maintain a traditional moral ethos, including in sexual conduct such as extramarital sex, among employees, as part of their distinctive religious character. Where the Civil Partnership Act requires a organizations to include persons whose sexual conduct violates its mission, the Act is in violation of the right of association as expressed in Article 40 of Ireland’s Constitution¹⁸ and international law,¹⁹ and may be in conflict with Section 37 of the Employment Equality Act, *supra*. The right to freedom of association recognizes that the ability of organizations to maintain employees who have beliefs and practices consistent with its mission is essential to an organization with a religious, or in fact, any worldview.

2.3. Conscience Rights and Healthcare

State legislation and governing medical boards provide inadequate protection for the conscience rights of religious believers in Ireland. Two important statutory bodies, the Irish Medical Council (IMC) and

¹¹ Henry McDonald, *Ireland to Hold Referendum on Blasphemy Law*, Guardian, Mar. 15 2010, available at <http://www.guardian.co.uk/world/2010/mar/15/ireland-referendum-blasphemy-law>.

¹² 2010 IRF Report.

¹³ McDonald, *supra* note 11.

¹⁴ Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 (Act No. 24/2010) (Ir.) available at <http://www.irishstatutebook.ie/2010/en/act/pub/0024/print.html#sec7> [hereinafter Civil Partnership Act].

¹⁵ See *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Douglas Laycock, Anthony Picarello Jr. & Robin Fretwell Wilson, eds., 2008).

¹⁶ Civil Partnership Act. See Universal Periodic Review: Ireland, *Submission of the Iona Institute for on Freedom of Conscience and Religion* (March 21, 2011) [hereinafter Iona UPR].

¹⁷ Equal Status Act, 2000 (Act No. 8/2000) (Ir.) available at <http://www.irishstatutebook.ie/2000/en/act/pub/0008/print.html>.

¹⁸ Ir. Const. at art. 40, *supra* note 1.

¹⁹ The European Convention of Human Rights provides for “the right to the right to freedom of peaceful assembly and to freedom of association with others.” European Convention at art. 11. Article 22 of the ICCPR states “Everyone shall have the right to freedom of association with others . . .” ICCPR, *supra* note 5.

the Pharmaceutical Society (PSI) of Ireland, have limited or no provisions for religious healthcare professionals in their respective professional codes of conduct.²⁰

The PSI has no provision for conscientious objection in its Guide to Professional Conduct.²¹ As a result, a pharmacist must stock and dispense “emergency birth control” (also called the “Morning-After-Pill”) or refer a customer to another pharmacist despite any conscientious objection to the possible abortifacient effect (tendency to abort an already formed fetus or embryo) of the drug.

The IMC has only limited conscience provisions in its Guide to Professional Conduct, requiring doctors to explain their objections to patients and to refer them to other doctors.²² Despite this provision, however, one Irish Doctor with a private practice was investigated by the IMC for refusing to provide fertility treatment to a (heterosexual) couple that was not married.²³ The case was dismissed on a technicality,²⁴ but the specter of bureaucratic investigation and censure remains for doctors who want to practice medicine according to their consciences.

3. Recommendations

During the periodic review, the UN Human Rights Council should take care to consider religious liberty in its evaluation of Ireland. The Becket Fund respectfully suggests that the UNHCR focus on Ireland’s international obligation to protect the peaceful expression and association, religious or otherwise, of all its citizens. UNHCR should encourage Ireland to repeal, in their entirety, blasphemy laws. UNHCR should encourage Ireland to provide exemptions for (particularly religious) individuals and organisations who cannot, in good conscience, endorse same-sex partnership, or promote medical practices violating their conscientious beliefs, particularly those involving abortion or contraception.

²⁰ Iona UPR at 3.

²¹ Pharmaceutical Society of Ireland, *Code of Conduct for Pharmacists* (2009), available at http://www.thepsi.ie/Libraries/Publications/Code_of_Conduct_for_pharmacists.sflb.ashx.

²² Irish Medical Council, *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* 16 (7th ed. 2009), available at <http://www.medicalcouncil.ie/Professional-Standards/Professional-Conduct-Ethics/The-Guide-to-Professional-Conduct-and-Ethics-for-Registered-Medical-Practitioners-7th-Edition-2009-.pdf>.

²³ Eithne Donnellan, *Infertility Treatment Refusal Led to Inquiry*, Irish Times, Apr. 15, 2010, available at <http://www.irishtimes.com/newspaper/ireland/2010/0415/1224268372829.html>.

²⁴ Iona UPR at 1.