

Judicial Communications Office

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COURT DELIVERS DECISION ON THE CHALLENGE TO TEACHING ARRANGEMENTS FOR RELIGIOUS EDUCATION AND COLLECTIVE WORSHIP IN CONTROLLED PRIMARY SCHOOLS

Summary of Judgment

Mr Justice Colton, sitting today in the High Court in Belfast, granted an application for judicial review by a child (JR87) and their father (G) challenging the teaching arrangements for religious education (“RE”) and collective worship (“CW”) in controlled primary schools in Northern Ireland. The court held that the relevant provisions of the Education and Libraries (Northern Ireland) Order 1986 (“the 1986 Order”), the Education (Northern Ireland) Order 2006 (“the 2006 Order”) and the Education (Core Syllabus for Religious education) Order 2007 (“the 2007 Order”) (“the impugned legislation”) were in breach of both applicants’ rights under Article 2 of the First Protocol ECHR read with Article 9 ECHR.

Background

JR87 is a 7 year old child from a non-religious family who attended a controlled, grant-aided primary school in Northern Ireland. The school provides teaching to children in years 1-3 only. The child completed her schooling there and moved to a new (controlled) school in September 2021, commencing primary 4 where she is still subject to the same legislation and core syllabus for the teaching of RE.

In May 2019 the child’s parents sent a letter to the school querying the provision of RE and CW. They were concerned that by the time the child had commenced primary 2 she had absorbed and adopted a religious and specifically Christian worldview which was not consistent with their own views and beliefs.

The school responded to this letter on 21 June 2019 which was a decision also under challenge in the case. In summary the letter stated the school would continue to provide CW and RE exactly as it had done and in accordance with the school’s understanding of the impugned legislation. The school set out the option of the child being excused from attendance at RE and CW. The parents did not accept this to be an appropriate alternative or lawful solution. It was also confirmed in the schools letter that all children at the school take part in RE and CW. The parents therefore held concerns around their child being singled out by not attending on the basis they are not Christians. The parents are seeking education (including religious provision) that is appropriately objective, critical and pluralistic, having regard to the age of their daughter.

The Department of Education denied that the legislation breached any of the applicants' human rights. The Education Authority on behalf of the school argued that the legislation (and not the school) should be the sole target of the claim. They also denied any breach of the applicants' human rights.

Legislative Framework

The legislative framework which governs the teaching of RE and CW in controlled, grant aided schools in Northern Ireland has been set out in detail at paragraphs [17] to [35] of the court's judgment. Article 21(1) of the 1986 Order provides for RE and daily CW in an assembly.

Article 21(2) provides that in a controlled school the RE required by paragraph (1) is to be undenominational which is described as education based on the Holy Scriptures and excludes education distinctive of any particular religious denomination. CW is also not to be distinctive of any particular religious denomination.

The court explained that while the Board of Governors in JR87's school has day to day control over both CW and RE (as per Article 21(3) of the 1986 Order) they are required, by law, to provide RE in accordance with the core syllabus.

Article 44 of the 1986 Order provides that the Department and Boards shall have regard to the general principle that pupils shall be educated in accordance with the wishes of their parents, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

A2P1 ECHR states that, "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."

The court emphasised that A2P1 should also be read with Article 9 ECHR which provides that everyone has the right to freedom of thought, conscience and religion.

In summarising the extensive Convention jurisprudence on the application of A2P1 to RE and the general principles to be distilled from this the court found among the principles which applied in this case was that a state, in fulfilling the function assumed by it in setting a curriculum for the teaching and instruction of RE, must take care that the information or knowledge included is conveyed in an objective, critical and pluralist manner. It must accord equal respect to different religious convictions and to non-religious beliefs. The court also emphasised that A2P1 and Article 9 seek to protect pluralism and to prevent indoctrination or proselytising, in the delivery of RE.

The Core Syllabus

The court set out how the 2007 Order gave effect to the current core syllabus which is at the heart of this challenge. It specifies a syllabus for every stage of primary and compulsory education, that is from foundation stage through to key stage 4. The school in question only teaches foundation stage (years 1 and 2) and half of key stage 1 (years 3 and 4). The syllabus has been summarised along with the non-statutory guidance for teachers within the court's judgment.

The syllabus has been drafted by the four main Christian Churches in Northern Ireland. There is no reference to any other faiths until key stage 3, which is at secondary level. At that stage a learning objective 4 is introduced under the heading 'World Religions' which states "pupils should be given an introduction to two world religions other than Christianity in order to develop knowledge of and sensitivity towards the religious beliefs, practices and lifestyles of people from other religions in Northern Ireland."

Conclusions

The court found that the parent's convictions (which were described as broadly humanist) were embraced by both Article 9 and A2P1 of ECHR when considered in line with the authorities such as *Williamson v Secretary of State for Education* [2005] UKHL (see para 24). The court stated that on any analysis the teaching of the syllabus can only have the effect of promoting Christianity and encouraging its practice. The court referred to numerous examples such as students are taught to look at and explore the content and structure of the Bible; that the Bible is the word of God; that God is the creator of all things, to make up their own prayers on various themes and to sing religious songs. The court therefore concluded that under the curriculum RE is not conveyed in an objective, critical and pluralist manner.

The court also came to the same conclusion in respect of CW. The evidence showed that CW includes reading Bible based stories and learning Bible based songs. It also showed that the only external persons invited to attend assembly at the school are exclusively Christian.

The court found that the guidelines (including the non-statutory guidelines which were developed by the Council for the Curriculum Examinations and Assessment (CCEA), the "Every School a Good School" guide for Governors which contained a chapter dealing with the provision of RE and CW in all grant aided schools and read with the Personal Development and Mutual Understanding (PDMU) area of learning within the Northern Ireland curriculum) whilst they seek to guide teachers away from any risk of religious instruction or indoctrination, such efforts ultimately flounder on the mandatory obligation to teach the core curriculum which by statute requires that RE must be based upon the Holy Scriptures.

The court also held that it is no answer that the core curriculum is only a minimum requirement if it has the effect of failing to provide RE in an objective, critical and pluralist manner.

The court referred to the case of *Zengin v Turkey* [2008] 46 EHRR 44, in which the ECtHR confirmed that when considering the provisions governing RE in schools “the arrangements for exemption are also a factor to be taken into account.” The respondents placed particular emphasis on Article 21(5) of the 1986 Order which provides an unfettered right of withdrawal for both CW and RE. Such a right is supplemented by the provisions of Article 21(4) and the requirement that RE and CW shall be so arranged that “no pupil shall be excluded directly or indirectly from the other advantages which the school affords.” There is also an express statutory requirement that the pupils not attending CW or RE are to be inconvenienced as little as possible under Regulation 21(3) of the Primary Schools’ Regulations 1973. Despite this and the fact that this is an unfettered right compared to other jurisdictions as set out in the Strasbourg jurisprudence analysed by the court, the applicants maintained, as a matter of principle, that the risk of disclosure of individual beliefs of the parents, the risk of stigmatisation of JR87 and the risk that parents will be deterred from making a request for withdrawal are all very much alive in this jurisdiction. The court found such concerns to be valid and such an unfettered right to exclusion is not a sufficient answer to the lack of pluralism identified by the court.

The court therefore concluded that the impugned legislation is in breach of both applicants’ rights under Article 2 of the First Protocol ECHR read with Article 9 ECHR. The court made it clear that JR87 has not however been denied a right to an education. In addition the court stated the rights of both applicants should be interpreted in such a way as to avoid a conflict between the religious instruction given by the school to JR87 and the convictions of her parents.

In light of that finding the court did not consider it appropriate to make any determination in relation to the allegation of a breach of Article 14 ECHR within the ambit of A2P1 and/or Article 8 and/or Article 9 ECHR. That is because in the area of religious education A2P1 is the *lex specialis* in relation to Article 9 of the Convention. This follows the approach that the European courts have taken in relation to this specific issue.

Equally, the court did not consider it appropriate to determine the applicant’s claim under section 75 of the Northern Ireland Act 1998. Although, it was open to the court to consider an alleged breach of section 75 by way of judicial review, the court held the overwhelming weight of authority establishes that the duties under the section should be enforced through the mechanisms provided by schedule 9 and paragraphs 10 and 11 of the Act by way of complaint to the Equality Commission.

The court stated that this complaint was to an extent founded on criticisms raised by the Equality Commission itself during the initial equality impact assessment

exercise. In this regard the court noted that a review of the school curriculum in Northern Ireland is ongoing and that the Department will be alive to its section 75 obligations when conducting the review. The court made clear that the outcome of any reconsideration and a review is not a matter for the courts but ultimately for the Department and the Northern Ireland Executive. In carrying out a reconsideration and review the court stated it is important to ensure that the arrangements for the teaching of RE and CW in Northern Ireland are compliant with the provisions of A2P1 and Article 9 of the Convention.

The court did not consider it appropriate to make any order against the school as the unlawfulness established in this case flows from the obligation under Article 21(1) and (2) of the 1986 Order which requires RE and CW to be based upon the Holy Scriptures. This obligation is manifested via Article 21(3)A which provides that in grant aided schools the RE required shall be in accordance with the core syllabus specified under Article 11 of the 2006 Order, which the court has found to be unlawful. The schools hands are therefore tied in terms of its mandatory obligation to deliver the core syllabus in accordance with the relevant legislation.

The court ultimately agreed with the decision of the Curriculum Tribunal, which examined the applicants' complaint initially, to the effect that the school did not act unreasonably with respect to the exercise of the powers conferred, or on the performance of the duties imposed on it by the statutory provisions relating to religious education and collective worship.

Remedy

The court left open the question of remedy, allowing the parties' time to reflect on the judgment and invited further submissions from counsel prior to making a final order.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk/>).

ENDS

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