

Objective, critical and pluralist: the secular law's requirements for a religious education

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In the matter of an application by JR87 (by her mother and next friend) and her father ("G") for judicial review" - reference number "COL11833

Introduction

1. This judicial review was brought by child JR87 (age 7) and her father G in relation to the teaching of religious education ("RE") and collective worship ("CW") in controlled primary schools in Northern Ireland. In essence, a number of statutory provisions (referred to as "the impugned legislation") set out requirements for non-denominational Christian RE and CW in all controlled, grant aided schools and gave effect to a core syllabus including learning objections on the Revelation of God, the Christian Church and Christian morality.
2. G and his wife are not Christians nor do they follow any other faith. They do not object to religious education per se, but seek that it is appropriately objective, critical and pluralistic, having regard to the age of their daughter. They were concerned that, by the time of her second year of primary school, their daughter was learning Christianity, rather than learning *about* Christianity. The School offered for her to be removed from RE and CW, but the parents did not consider this to be a viable option, as she would be singled out from the other children in the school.
3. The Applicants challenged both the impugned legislation and the decision of the School to continue teach the syllabus following concerns raised by G ("the impugned decision").
4. The Applicants argued that the syllabus was incompatible with the following rights under the European Convention of Human Rights (ECHR):
 - (a) Article 2 of the First Protocol (A2P1, the right to education) read together with Article 9 (right to religion and belief)

- (b) Article 8 (right to a private and family life)
- (c) Article 9 (right to religion and belief)
- (d) Article (right to freedom of expression)
- (e) Article 14 (right to non-discrimination), read with A2P1, Article 8 or Article 9

Legal test

5. The High Court (Colton J) rehearsed the key cases on the right to education and religious education (A2P1 and Article 9), in particular *Williamson v Secretary of State for Education* [2005] UKHL 15, *Yalcin & Ors v Turkey* (Application No 21163/11), *Lautsi v Italy* [2012] 54 EHRR 3, and *Folgero v Norway* [2008] 46 EHRR 47 [47-59].
6. The Court set out the following principles which emerge from the case law in relation to the relationship between A2P1 and Article 9 [60]:
 - (a) Setting the curriculum falls within the competence of contracting states.
 - (b) States enjoy a wide margin of appreciation.
 - (c) Compliance with the ECHR involves questions of expediency, available resources and local conditions; States enjoy considerable latitude upon which it is not for the courts to rule.
 - (d) Parents cannot require the state to provide a particular type of education.
 - (e) States are permitted to set a curriculum which includes the teaching and instruction of religion.
 - (f) States may legitimately give priority to one religion above another where that religion is predominant or adhered to by a majority of its citizens.
 - (g) Any RE curriculum must respect parents' convictions be they religious or non-religious. This is a positive obligation.
 - (h) Information must be conveyed in an objective, critical and pluralist manner. It must accord equal respect to different religious convictions and to nonreligious beliefs.
 - (i) In considering whether a state has complied with the above, the court should take into account an option to exempt children from RE.

7. In summary, while affording a wide margin of appreciation to member states, A2P1 and Article 9 seek to protect pluralism and to prevent indoctrination or proselytising, in the delivery of RE [61].

Analysis

8. On the core syllabus, it was noted that as it had been drafted by the four main churches in Northern Ireland, it unsurprisingly prioritises and promotes the Christian faith. In fact, there was no teaching about other world religions until secondary school. While avoiding an overly factual analysis of the curriculum, the Court considered that this could only have the effect of promoting Christianity and encouraging its practice. As such, under this curriculum RE was not conveyed in an objective, critical and pluralist manner [67-74].
9. The Court reached the same conclusion that collective worship was also not conveyed in an objective, critical and pluralist manner. In particular, songs that are learnt during Assemblies are bible based, and the only external persons invited to attend assemblies are Christians (from a variety of denominations) [75-83].
10. The Court was also not convinced that non-statutory guidance, which emphasised the importance of having an awareness and respect for other faiths and beliefs, was sufficient to mitigate the above. There was a mandatory obligation to teach the core curriculum which by statute requires that religious education must be based upon the Holy Scriptures [86-97]. It was also noted that in recent years the time for formal RE had been reduced and the law allowed RE to be excluded from school inspections [99-100]. This, in the Court's view, "*emphasises the need for a reappraisal of the core curriculum in so far as it relates to RE and the provision by schools of CW*" [101].
11. Finally, the Court considered the possibility of excluding/removing a child from RE and CW. The concern of G and his wife was that this did not answer the lack of a pluralist and objective religious education. Furthermore, it would have the effect of singling out their child. The Court reviewed the authority of *R (Fox and others) v Secretary of State for Education* [2015] EWHC 3404 (Admin) (in relation to the content of the GCSE in religious studies), in which Warby J noted "*the need to withdraw a child would be a manifestation of the lack of pluralism in question.*" The Court agreed with the concerns raised by the parents; an unfettered right to exclusion/withdrawal did not mitigate the lack of a critical, pluralist and objective education being sought. It further noted that it ran the risk of placing an undue burden on parents and of stigmatisation of their children [102-122].

12. For all of these reasons, the Court considered that the impugned legislation did breach the Applicants' rights under A2P1 read together with Article 9 [123]. The Court did not consider it appropriate to make a determination in relation to Article 14 ECHR read together with Article 8, Article 9 or A2P1 the area of religious education A2P1 is the *lex specialis* in relation to Article 9 ECHR [124-127].
13. Finally, the Court did not consider it appropriate to make an order against the School, noting that the unlawfulness flowed from its obligations under the impugned legislation.

Conclusion

14. This decision is a rare example of a court intervening in a subject for which states enjoy a wide margin of appreciation. The Court recognised throughout that it was dealing with a sensitive and nuanced area, and in particular when considering remedy. It noted that the curriculum is currently under review and that the outcome of this review is not a matter for the courts (save for a reminder that any revised curriculum should comply with A2P1 and Article 9) [137]. In the meantime, it has asked the parties to reflect on the decision and invited further submissions prior to making a final order [138].

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