

Advice of the Ombudsman for Children on
issues related to the manifestation of
religious belief within schools

August 2008

This advice has been prepared further to a request from the Office of the Minister for Integration for the Ombudsman for Children's views on issues related to accommodating the manifestation of religious belief within uniform or dress codes in schools.

It should be noted at the outset that while the issues under consideration by the Minister touch on fundamental rights and freedoms protected by both domestic and international law, they have not been the source of serious difficulties in practice in Ireland. To the best of the Ombudsman for Children's Office's (OCO's) knowledge, no young people have been excluded or otherwise sanctioned for wearing particular apparel as a manifestation of their religious belief in school. Schools have to date adopted a pragmatic and accommodating approach in which requests for permission to depart from the uniform code on the basis of a religious belief have been dealt with sensitively.

It is our understanding that the Government has decided not to issue a directive to schools on the wearing of particular types of clothing for religious reasons and that this position largely reflects the views of the stakeholders who were recently canvassed by the Minister for Integration. The Minister did indicate, however, that general guidelines will be provided on how such matters might be handled.

The OCO supports this approach in principle. However, general guidance is important in order that the appropriate principles are taken into account and that sound procedures are followed.

Principles

There are human rights standards to which schools and the State must have regard when considering this question, in particular those contained in the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR).

Article 14 (3) of the UNCRC states that 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.

The UN Committee on the Rights of the Child – which monitors the implementation of the UNCRC in States Parties – has addressed the question of the prohibition of manifestations of religious belief in educational settings and the extent to which such prohibitions are compatible with the requirements of the Convention.

The Committee has been critical of States Parties that have sought to limit children's freedom to wear religious clothing or symbols in schools. In its

examination of this question in the context of the implementation of the Convention in other States, the Committee has pointed out that:

- Banning such symbols and clothing can be counterproductive and fail to take into account the best interests of the children involved;
- Introducing such measures could inhibit children's understanding of the right to freedom of religion and to the development of tolerance as promoted in the aims of education set out in the Convention; and that
- The question of dress codes might best be addressed within schools themselves, encouraging the participation of children and young people.

The European Court of Human Rights has also examined the question of wearing a headscarf for religious reasons in light of Article 9 (2) of the ECHR which is similar to Article 14 (3) of the UNCRC. For interference with the right to manifest one's religion not to violate Article 9 (2), the interference must be prescribed by law, necessary in a democratic society, directed to a legitimate purpose, and proportionate in scope and effect. There is a significant body of case law that has been developed in this area and it is also worth noting that the courts in England and Wales have had occasion to consider the question of students wearing religious symbols in school in the context of Article 9 of the Convention.

As has been pointed out by a number of commentators on this issue, allowing certain exceptions to the uniform or dress code on the basis of religious belief does not necessarily entail allowing any exception to that code on such a basis. There are other concerns such as health and safety, as well as effective communication between pupils and teachers which may, on a case by case basis, reasonably legitimise limitations to the freedom to manifest one's religion in an educational setting in line with the test set out in Articles 9 and 14 of the ECHR and UNCRC respectively.

Advice

I would advise that should a decision be taken not to issue a directive to schools but to provide general guidelines (as we understand is the current thinking), any such general guidance should clearly set out the human rights and equality framework within which schools must exercise their discretion. In particular, the principles and tests elaborated by the UN Committee on the Rights of the Child and the European Court of Human Rights should be outlined and the obligation on all organs of the State to act in accordance with the ECHR recalled.

Procedure

Any general guidelines issued to schools on this matter should emphasise the importance of consultation, particularly with young people and their parents. As mentioned above, the UN Committee on the Rights of the Child has stressed this point in its recommendations to other States Parties.

Article 12 of the UNCRC requires that children and young people's views be taken into account in all matters affecting them with due regard to their age and maturity. What this means in relation to the question under consideration is that when uniform or dress codes are being drawn up, young people's views should be sought and they should be involved in any such process from the beginning. Children and young people should also be involved in any specific decisions taken by schools when exercising their discretion in line with Articles 3 and 12 of the UNCRC.

The decision to allow schools to adopt their own approach to the question, within the parameters of the general guidance which should come from the Government, should facilitate this type of consultation.

Advice

Any general guidance to be drawn up should set out the need to involve children and young people in decision making in accordance with Articles 3 and 12 of the UNCRC. It might also elaborate on the benefits of such an approach.

I trust that the comments above are of assistance to the Minister as he considers how to proceed with this issue. The Ombudsman for Children's Office remains at his disposal should he require any further information.