



Ms Aoife Finnegan MLA

Chairperson

Ad Hoc Committee on the School Uniforms (Trousers) Bill

Room 383

Parliament Buildings

Ballymiscaw, Stormont

Belfast BT4 3XX

By email to: committee.trousersbill@niassembly.gov.uk

19 August 2026

Dear Ms Finnegan,

Re: The School Uniforms (Trousers) Bill

The NI Human Rights Commission (the Commission) welcomes the opportunity to provide evidence to the Ad Hoc Committee as it scrutinises the School Uniforms (Trousers) Bill.

The Commission, pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with these functions, the following advice is submitted to the Ad Hoc Committee.

The School Uniforms (Trousers) Bill will amend the School Uniforms (Guidelines and Allowances) Act (NI) 2026 to permit all pupils the option to wear trousers as part of their school uniform and to permit all pupils to wear trousers, shorts or other leg coverings while taking part in recreational activities, sport or outdoor activities, as appropriate for that activity, as part of their school uniform.¹

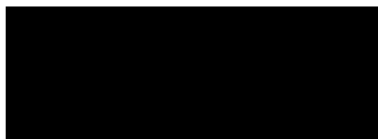
¹ Clause 1, School Uniforms (Trousers) Bill

The Commission has previously provided evidence to the Committee for Education on its proposals for a Bill to allow girls the option to wear trousers to school. This advice is relevant to the Ad Hoc Committee and as such we have enclosed it at Annex A. The advice details the relevant human rights framework and many of the factors relevant to the practical application of that framework including for example in managing menstruation and the additional uniform costs incurred by girls.

In addition to this advice on the proposed Bill, the Committee for Education requested additional advice pertaining to possible exemptions from the proposed Bill. This is also relevant to the Ad Hoc Committee. We enclose that advice at Annex B of this correspondence. In addition to our own advice, the Commission notes that the Committee for Education sought legal advice on the issue of exemptions and decided “against an exemption on the basis that the Bill offers a choice to pupils, rather than restricting them or requiring them to act in a particular way. It is a permissive Bill rather than a restrictive one”.² The Commission advised that the matter of exemption required careful analysis of the factors asserted by those claiming the right to an exemption. The Commission did not offer a definitive view on whether the factors in any particular case would merit an exemption. As previously stated, that is not an assessment properly made by the Commission, but we did set out the exercise that should be conducted. Our position remains the same.

I hope that this is helpful. If we can provide any further assistance, please do not hesitate to contact us.

Yours sincerely,



Alyson Kilpatrick
Chief Commissioner

² NI Assembly Hansard, 'The School Uniforms (Trousers) Bill: Nick Mathison MLA', 30 June 2026.

ANNEX A – Advice to the Committee for Education on its proposal for a Bill on the right to wear trousers in school

Mr Nick Mathison MLA

Chair of the Committee for Education
Room 428, Parliament Buildings
Ballymiscaw, Stormont
Belfast BT4 3XX

By email: committee.education@niassembly.gov.uk

19 February 2026

Dear Chair,

Re: Consultation on Proposal for a Bill on the Right to Choose to Wear Trousers in School

The NI Human Rights Commission (the Commission) welcomes the opportunity to respond to the Committee for Education's Call for Views on its proposal to introduce a Bill on the right to choose to wear trousers to school.

The Commission, pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with these functions, the following advice is submitted to the Committee for Education to inform the development of any subsequent Bill.

The Commission welcomes the aim of the proposal, to introduce a Bill to allow girls to choose to wear trousers to school. The Commission understands that, as things stand, girls can petition their school on this matter.³ However, this places the significant burden of advocacy on the young person. The Commission appreciates that tackling this issue via legislation is arguably a more protracted process, unlike the statutory policy route.⁴ However, it seems reasonable that

³ Council of Europe, 'ECTHR: Guide on Article 14 of the Convention (prohibition of discrimination) and on Article 1 of Protocol No. 12 (general prohibition of discrimination)', (CoE, 2024).

⁴ NI Assembly Hansard, 'NI Assembly: Right of Girls to Wear Trousers in Schools – Michelle Guy MLA', 27 January 2026.

the Committee would opt to take the issue forward in legislation, for reasons of certainty and consistency.

While there is not any express human right for girls to wear trousers to school (perhaps better expressed as a right not to wear skirts), there are several ECHR human rights standards that should inform policy and legislative progress, including the right to personal autonomy, the right to privacy and physical integrity, the right not to be discriminated against, the right to full gender equality, the right to be free from violence and the threat of violence and abuse. To add to such rights, there is of course the practical issue of increased cost, which has a direct impact upon the right to education and to choose one's school.

Human Rights Framework

Article 2 of Protocol 1 of the ECHR recognises the right to education, confirming that "no person shall be denied the right to education".⁵ The European Court of Human Rights (ECtHR) has noted that the right to education "is indispensable to the furtherance of human rights" and "a restrictive interpretation... would not be consistent with the aim or purpose of that provision".⁶ The right to education is enshrined across several other human rights instruments to which the UK Government, and by extension the NI Executive, is bound, including UN Convention on the Rights of Children (CRC), Articles 28-29; UN International Convention on Economic Social and Cultural Rights (ICESCR), Article 13; UN Convention on the Rights of Persons with Disabilities (CRPD), Article 24; UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Article 10; UN Convention on the Elimination of Racial Discrimination (CERD), Article 5; and the UN Refugee Convention, Article 22. General Comments and Concluding Observations attached to these treaties provide guidance and best practice standards, which should be followed. In particular, the Commission encourages the Committee to include explicit reference to the 'best interests of the child' principle in any proposed Bill, in accordance with the UN CRC.⁷ The Commission also encourages the Committee to develop any legislation with the meaningful participation of children and young people, in keeping with a proper human rights-based approach.⁸

⁵ Other ECHR rights relevant to this potential legislation include ECHR Article 2, right to life, Article 3, freedom from torture and cruel, inhuman or degrading treatment, Article 8, respect for private and family life and Article 14, freedom from discrimination.

⁶ *Leyla Şahin v Turkey* (2004) ECHR 299, at para 137.

⁷ Article 3(1), UN Convention on the Rights of the Child 1989.

⁸ European Network of National Human Rights Institutions, 'Human Rights-Based Approach'. Available at: [Human Rights-Based Approach - ENNHRI](#); A human rights based approach centres on the guiding principles of participation, accountability, non-discrimination, empowerment and legality.

The Commission encourages the Committee to adopt a robust human rights-based approach to the development and implementation of proposed legislation on the right to choose to wear trousers to school.

Non-Discrimination

The lack of statutory guidance in relation to the ability to choose to wear trousers has a gendered implication, given that it is currently the case that girls are primarily expected to wear skirts to school, with many schools not providing an option to choose to wear trousers. Additionally, gender non-conforming students will be significantly affected by current uniform policy. The ECHR, Article 14,⁹ requires that the enjoyment of ECHR rights, including the right to education, is upheld without discrimination. This is not a stand-alone right and must be asserted in conjunction with another right that is within the ambit of the ECHR. Article 14 guarantees that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The ECtHR has generally given the words “other status” a wide meaning, to include grounds such as age, gender identity, sexual orientation, health and disability, among others.¹⁰

The Equality Commission NI has advised that it is permissible for schools to have different uniform policy for boys and girls, however it notes that what is an acceptable form of dress in school depends on what is currently considered to be a “conventional form of dress”.¹¹ It elaborates that “because it is quite normal for girls to wear trousers, there is a strong argument that it is unlawful sex discrimination to deny a girl the opportunity to wear smart trousers as an alternative to skirts as part of a uniform code”.¹²

It should also be noted that the ability to wear dark coloured or looser fitting trousers to more comfortably manage menstruation has been identified as a reason to allow girls this choice.¹³ Article 10 of UN CEDAW requires states to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education”. The UN

⁹ The right to freedom from discrimination is also provided for within UN ICESCR, Article 2; UN CRPD, Article 5; UN CERD, Article 5, and UN CEDAW Article 10.

¹⁰ Council of Europe, ‘ECtHR: Guide on Article 14 of the Convention (prohibition of discrimination) and on Article 1 of Protocol No. 12 (general prohibition of discrimination)’, (CoE, 2024).

¹¹ Equality Commission for NI, ‘Schools: Education service providers’. Available at: [ECNI - Schools, Education Service Providers, Equality Commission, Northern Ireland](#)

¹² Equality Commission for NI, ‘Schools: Education service providers’. Available at: [ECNI - Schools, Education Service Providers, Equality Commission, Northern Ireland](#)

¹³ Menstruation Matters, ‘Briefing Paper: Menstruation Matters and the School Uniforms Bill’ (Menstruation Matters, 2025).

CEDAW Committee has noted that compliance with Article 10 requires that essential consideration be given to “providing adequate infrastructure in educational institutions in order to remove the barriers to the successful completion of school faced by girls from the age of menarche”.¹⁴ Allowing girls to make a choice on whether to wear a skirt or trousers will provide greater flexibility to manage their menstruation.

Research also indicates that school uniform policies that have separate rules for boys and girls can reinforce negative gender stereotypes, while leaving transgender and gender non-conforming children more vulnerable to bullying, stress, and anxiety.¹⁵ The UN CEDAW Committee requires States to address gender stereotyping in schools.¹⁶ The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity highlights that Trans and gender non-conforming students can face humiliation through gendered uniforms”.¹⁷ Adopting flexible uniform policies is likely to alleviate to some extent issues of gender stereotyping and LGBT+ related bullying. Research conducted by the NI Assembly recommends that as a matter of good practice, schools in NI may wish to adopt a flexible approach to school uniform policy by avoiding strict requirements and by having a gender-neutral uniform option available.¹⁸ The Commission suggests that ‘may’ be read as ‘should’.

Violence against Women and Girls

Allowing girls to have the choice to wear trousers to school is in keeping with good trauma informed practice.¹⁹ In 2024, 17 per cent of 16 year old girls who were surveyed had experienced sexual violence in NI.²⁰ It has been noted that being required to wear skirts leaves girls more vulnerable to “upskirting”. For example, the Mental Health Champion for NI has identified that a trouser option should always be available, and that “no pupil should be forced to wear clothing that leaves them vulnerable to upskirting... or feeling exposed”.²¹ Research carried out in England has identified that female pupils reported that they were

¹⁴ CEDAW/C/GC/36, ‘UN CEDAW Committee General Comment No 36: the Right of Women and Girls to Education’, 27 November 2017, at para 30.

¹⁵ NI Assembly, ‘Research and Information Service Briefing Paper: School Uniforms – Cost, Gender and Behavioural considerations’, (NIA, 2021).

¹⁶ CEDAW/C/GC/36, ‘UN CEDAW Committee General Comment No 36: the Right of Women and Girls to Education’, 27 November 2017, at para 25.

¹⁷ UN OHCHR, ‘Press Release: The inclusion of LGBT people in education settings of paramount importance to “leaving no one behind”’, 2 October 2019.

¹⁸ NI Assembly, ‘Research and Information Service Briefing Paper: School Uniforms – Cost, Gender and Behavioural considerations’, (NIA, 2021).

¹⁹ NI Assembly Hansard, ‘Mental Health Issues in Schools: Mental Health – Professor Siobhán O’Neill’, 24 September 2025.

²⁰ The Executive Office, ‘Ending Violence against Women and Girls: Experiences and Attitudes of 16 Year Olds in NI’ (NISRA, 2024).

²¹ NI Assembly Hansard, ‘Mental Health Issues in Schools: Mental Health – Professor Siobhán O’Neill’, 24 September 2025.

having their skirt length “policed” by schools in a way that felt sexist and sexualising.²² While it was not the intention of school policies to be sexist or sexualising, in practice they had a similar impact.²³

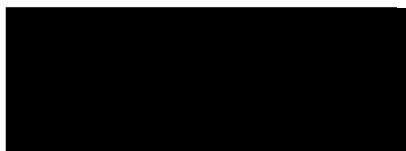
The UN CEDAW Committee notes that despite “rampant sexual harassment and abuse of girls in educational institutions... those facts have not been systematically factored into educational policy and programmes”.²⁴ It is vital to note that the allowance to wear trousers will not prevent violence against women and girls, and girls should be able to wear skirts without being concerned about being victimised. However, having the option to wear trousers could permit girls to feel more comfortable and safer in school settings.

Uniform Costs

Finally, it is worth noting that school skirts, particularly in secondary school settings, are usually specific to the individual school and are therefore more expensive than generic school trousers that are available to boys. This is an additional uniform cost incurred by families of girls. In relation to the affordability of uniforms, the UN CEDAW Committee has highlighted that “parents are faced with meeting the hidden cost of uniforms, transportation, textbooks and other school materials, lunch and various levies and user fees with students from the poorest quintile being most adversely affected and often stigmatised”.²⁵ This additional cost for families of girls and transgender and non-binary children could be mitigated by the option to wear school trousers.

I hope that this is helpful. If we can provide any further assistance, please do not hesitate to contact me.

Yours sincerely,



Alyson Kilpatrick

²² Rape Crisis Tyneside and Northumberland, ‘Roll Down Your Skirt: How Schools Teach Victim-Blaming and Rape Culture Through Uniform Checks’ (Rape Crises Tyneside and Northumberland, 2019).

²³ Rape Crisis Tyneside and Northumberland, ‘Roll Down Your Skirt: How Schools Teach Victim-Blaming and Rape Culture Through Uniform Checks’ (Rape Crises Tyneside and Northumberland, 2019).

²⁴ CEDAW/C/GC/36, ‘UN CEDAW Committee General Comment No 36: the Right of Women and Girls to Education’, 27 November 2017, at para 25.

²⁵ CEDAW/C/GC/36 ‘UN CEDAW Committee General Recommendation No. 36 on Girls’ and Women’s Right to Education’, 16 November 2017, at para 36.

Chief Commissioner

Annex B – Advice to the Committee for Education on potential exemptions on its proposed Bill on the right to wear trousers in school.

Mr Nick Mathison MLA

Chair of the Committee for Education
Room 428, Parliament Buildings
Ballymiscaw, Stormont
Belfast BT4 3XX

By email: committee.education@niassembly.gov.uk

10 June 2026

Dear Chair,

Re: Exemptions from Proposed Legislative Changes to Allow Pupils to Choose to Wear Trousers to School

The NIHRC welcomes the opportunity to respond to the Committee for Education's request for advice pertaining to a letter from the Free Presbyterian Education Board of Presbytery, dated 24 February 2026, (the letter). The letter seeks an exemption, for Independent Schools, from the proposed legislative changes allowing girl pupils to choose to wear trousers to school.

The letter refers to the ethos of the five Independent Christian Schools associated with the Free Presbyterian Church. That ethos, it is said, requires a distinction in dress between boys and girls, which is "reflective of the denominational position that dress is modest and appropriate". Moreover, it is noted in the letter that the same distinction in dress is contractually required of teachers". It follows, it is suggested, that permitting pupils to do something which is contrary to the school's ethos and the employment requirements for teachers "will only create confusion within our schools and go contrary to our Biblical ethos and sincerely held beliefs".

The NIHRC has provided advice to the Committee on the right for girls to wear trousers, or better put, not to wear skirts,²⁶ which we will not restate here. This

²⁶ Letter to the Committee for Education from the NI Human Rights Commission, 19 February 2026.

advice deals principally with Article 9 and Article 2 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).²⁷

Article 9 ECHR

Article 9 provides as follows:

- “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to 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 worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The Article 9(1) right to ‘freedom’ of thought, conscience and religion is unqualified, meaning it cannot be restricted.²⁸ However, the right to ‘manifest’ one’s religion or beliefs, is qualified, meaning it can be limited if prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out in Article 9(2).²⁹ The ECtHR has clarified what constitutes ‘manifestation’ of religious belief, which may take the form of “worship, teaching, practice and observance”.³⁰ While the unqualified right to freedom of thought, conscience and religion within Article 9(1) protects views that attain a certain level of cogency, seriousness, cohesion and importance,³¹ “even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a ‘manifestation’ of the belief.”³² To be protected as a manifestation of belief, the relevant act must be “intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of

²⁷ Article 9, European Convention of Human Rights. Freedom of thought, conscience and religion is protected across several other human rights instruments, including Article 18, International Covenant on Civil and Political Rights; Article 14, UN Convention on the Rights of the Child; and Article 5(d)(vii), UN Convention on the Elimination of all forms of Racial Discrimination.

²⁸ *Ivanova v. Bulgaria*, application No 52435/99, judgment of 15 April 2007, at para 79.

²⁹ *Eweida and Others v United Kingdom*, application No 48420/10, judgment of 15 January 2013, at para 80.

³⁰ *Eweida and Others v United Kingdom*, application No 48420/10, judgment of 15 January 2013, para 80.

³¹ *Ibid*, para 81.

³² *Ibid*, para 82.

each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question.”³³

The European Court of Human Rights (ECtHR) has made it clear that to limit such right requires serious and compelling reasons within the wording of Article 9(2).³⁴ As States are afforded a ‘margin of appreciation’ in their management of rights so the ECtHR will “have regard to what is at stake, namely the need to protect the rights and freedoms of others, to preserve public order and to secure civil peace and true religious pluralism, which is vital to the survival of a democratic society”.³⁵

Wearing religious clothing or symbols, in certain circumstances, has been found to constitute a manifestation of a person’s religion or belief and therefore to engage Article 9. It is particularly relevant that it is of “value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others”.³⁶ In the case of *Hamidović v Bosnia and Herzegovina*, the ECtHR found that, even where the wearing of an article of clothing does not represent a strong religious duty, the strength of its traditional roots may be considered by many people to constitute a religious duty.³⁷ That case concerned the punishment of a Muslim witness in a criminal trial for refusing to remove a skullcap. The ECtHR emphasised that it was not a case “about the wearing of religious symbols and clothing at the workplace... which is a completely different issue.” The ECtHR, in finding that the punishment imposed on the applicant for wearing a skullcap in a courtroom constituted a limitation on the manifestation of his religion, observed that wearing a skullcap was in line with “the official position of the Islamic Community in Bosnia and Herzegovina, according to which the wearing of the skullcap does not represent a strong religious duty, but it has such strong traditional roots that it is considered by many people to constitute a religious duty. Having found it to be a limitation, the ECtHR went on to consider whether it was within Article 9(2). To determine that, it had to be considered whether it was prescribed by law, pursued one or more of the legitimate aims set out in 9(2) and was necessary in a democratic society to achieve the aim or aims concerned.³⁸ By way of example, in the case of *X v United Kingdom*, concerning the penalisation of a Sikh man who refused to remove his turban to wear a helmet while riding his motorcycle, the ECtHR found

³³ *Ibid.*

³⁴ *Leyla Şahin v Turkey*, application No 44774/98, judgment of 10 November 2005, at para 107.

³⁵ *Ibid.*, at para 110.

³⁶ *Ibid.*, at para 94.

³⁷ *Hamidović v Bosnia and Herzegovina*, application No 57792/15, judgment of 5 December 2017, at para 30.

³⁸ *Ibid.* para 30.

that any interference with the applicant's Article 9 rights was "justified for the protection of health".³⁹

In another case, *S.A.S v France*, concerning the banning of the wearing of a niqab in public, the ECtHR held that the relevant limitations did not constitute a breach.⁴⁰ In that case the ECtHR noted the relevance of the fact that the applicant accepted that she wore the niqab in public and in private, but not systematically: she might not wear it, for example, when she visited the doctor, when meeting friends in a public place, or when she wanted to socialise in public. She was thus content not to wear the niqab in public places at all times but wished to be able to wear it when she chose to do so, depending in particular on her spiritual feelings. There were certain times (for example, during religious events such as Ramadan) when she believed that she ought to wear it in public in order to express her religious, personal and cultural faith. Her aim was not to annoy others but to feel at inner peace with herself. The applicant did not claim that she should be able to keep the niqab on when undergoing a security check, at the bank or in airports, and she agreed to show her face when requested to do so for necessary identity checks. The ECtHR noted that "personal choices as to an individual's desired appearance, whether in public or in private places, relate to the expression of his or her personality and thus fall within the notion of private life. It has found to this effect previously as regards a haircut..."

The ECtHR reiterated that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9(2), is exhaustive and that their definition is restrictive. It observed that "In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected."⁴¹ It continued noting that the ECtHR "has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. As indicated previously, it also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed... Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair

³⁹ *X v United Kingdom*, application No 7992/77, judgment of 12 July 1978.

⁴⁰ *SAS v France* *Ibid.*

⁴¹ *Ibid.* para 126.

treatment of people from minorities and avoids any abuse of a dominant position.”⁴²

The ECtHR also observed that “the national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight.”⁴³ This margin of appreciation, however, goes hand in hand with supervision embracing both the law and the decisions applying it. The task is to determine whether the measures taken at national level were justified in principle and proportionate. Ultimately, on the facts of the *S.A.S.* case the ECtHR found that “in view of its impact on the rights of women who wish to wear the full-face veil for religious reasons, a blanket ban on the wearing in public places of clothing designed to conceal the face can be regarded as proportionate only in a context where there is a general threat to public safety.”⁴⁴

However, the French Government also argued that it was responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of living together. From that perspective, it was noted that the State was seeking to protect a principle of interaction between individuals, which in its view was essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society. The ECtHR noted “It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society.”⁴⁵ Finally, having regard in particular to the breadth of the margin of appreciation afforded to France the Court held that the ban was “proportionate to the aim pursued, namely the preservation of the conditions of “living together” as an element of the protection of the rights and freedoms of others... [and] can thus be regarded as necessary in a democratic society.”⁴⁶

In *Aweida and Others v United Kingdom*, the UK Government argued that Article 9 ECHR does not protect each and every act or form of behaviour motivated or inspired by religion or belief. They argued that behaviour which was motivated or inspired by religion or belief, but which was not an act of practice of a religion in a generally recognised form, falls outside the protection of Article 9. In that case, two applicants complained that their desire to wear a visible cross at work was

⁴² *Ibid.* para. 127.

⁴³ *Ibid.* para. 129.

⁴⁴ *Ibid.* para. 139.

⁴⁵ *Ibid.* para. 153.

⁴⁶ *Ibid.* paras. 157-158.

protected. Another applicant complained that his objection to providing psycho-sexual therapy to same-sex couples was protected but the UK Government argued that it could not be described as the practice of religion in a generally recognised form. In the alternative, the Government argued that even if the visible wearing of the cross, or the refusal to offer specific services to homosexual couples, were a manifestation of belief and thus a right protected by Article 9, there had been no interference with this right in respect of any of the applicants.

The ECtHR noted that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a democratic society. In its “religious dimension it is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.”⁴⁷ It explained that religious freedom is “primarily a matter of individual thought and conscience. This aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9(1), freedom of religion also encompasses the freedom to manifest one’s belief... The manifestation of religious belief may take the form of worship, teaching, practice and observance. Bearing witness in words and deeds is bound up with the existence of religious convictions... Since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9(2). This second paragraph provides that any limitation placed on a person’s freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims” set out in Article 9(2).

It is helpful to consider the reasoning in respect of two different outcomes within the Eweida case. In respect of the wearing of a cross by an employee of the private company, the ECtHR observed that the UK courts did not strike a fair balance between the applicant’s rights under Article 9 and the company’s wish to protect its brand, where the latter was afforded too much weight.⁴⁸ In the same case, a second applicant who wore a necklace with a cross, while working as a nurse, was asked to remove that necklace for the purposes of health and safety.⁴⁹ The ECtHR observed that the decision to wear a cross necklace to work was a manifestation of her faith, but observed that “the reason for asking her to remove the cross, namely the protection of health and safety on a hospital ward, was inherently of a greater magnitude than that which applied [to the first

⁴⁷ *Eweida v UK* *ibid.* at para. 79.

⁴⁸ *Eweida and Others v United Kingdom*, application No 48420/10, judgment of 15 January 2013, at para 94.

⁴⁹ *Ibid.*, at para 96.

applicant]” and held that there had been no violation of Article 9 in this instance.⁵⁰

In respect of educational settings, the ECtHR has also afforded States a wide margin of appreciation noting “it is not possible to “discern throughout Europe a uniform conception of the significance of religion in society and the meaning or impact of the public expression of a religious belief will differ according to time and context”.⁵¹ In relation to the banning of wearing of religious dress in schools, the ECtHR observed that “the State may limit the freedom to manifest a religion, for example by wearing an Islamic headscarf, if the exercise of that freedom clashes with the aim of protecting the rights and freedoms of others, public order and public safety”.⁵² The principles are applied in the same way as set out above, however, weight will also be given to the fact that the provision will apply to minors, in a school setting, and may involve considerations of the safety of girls travelling to and from school as well as at school. Both the children and the children’s parent(s) have rights, with particular weight likely to be given to the child’s right to safety.

Article 2, Protocol 1 ECHR

Also relevant to any consideration of an exemption is Article 2 of Protocol 1 of the ECHR.⁵³

Article 2 of Protocol 1 (A2P1) provides:

“No person shall be denied a right to an 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 is in conformity with their own religious and philosophical convictions.”

According to the Council of Europe, A2P1, in its first sentence, protects the right of an individual to receive an education. The second sentence guarantees the right of parents to have their children educated in conformity with their religious and philosophical convictions.⁵⁴ The Council of Europe explains “Article 2 of

⁵⁰ *Ibid*, at paras 99-10

⁵¹ *Leyla Şahin v Turkey*, application No 44774/98, judgment of 10 November 2005, at para 109.

⁵² *Dogru v France*, application No 27058/05, judgment of 4 December 2008, at para 64.

⁵³ The right to education is enshrined across several other human rights instruments to which the UK Government, and by extension the NI Executive, is bound, including Articles 28-29, UN Convention on the Rights of Children; Article 13, UN International Convention on Economic Social and Cultural Rights; Article 24, UN Convention on the Rights of Persons with Disabilities; Article 10, UN Convention on the Elimination of all forms of Discrimination against Women; Article 5, UN Convention on the Elimination of Racial Discrimination; and Article 22, UN Refugee Convention.

⁵⁴ Council of Europe Guide to Art. 2, Protocol 1, Council of Europe/European Court of Human Rights, 2015.

Protocol No. 1 constitutes a whole that is dominated by its first sentence, the right set out in the second sentence being an adjunct of the fundamental right to education..."⁵⁵ requires the State to respect parents' religious and philosophical convictions, throughout the State education system.⁵⁶ In order to ensure that restrictions that may be imposed do not curtail the right to education to such an extent as to impair its very essence and deprive it of its effectiveness, the restrictions must be foreseeable for those concerned and pursue a legitimate aim. The ECtHR observed that the central aim of the second sentence of Article 2 of Protocol 1 is to safeguard "the possibility of pluralism in education, which possibility is essential for the preservation of "democratic society" as conceived by the Convention".⁵⁷ The ECtHR also considered rules on dress under this part of A2P1 in *Kose and Others v Turkey*, holding that an obligation to not cover their heads did not deprive the parents of their rights to educate their children in line with their own religious convictions and consequently did not find a breach.⁵⁸ It has been described as follows, onto the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions. Consequently, parents may not refuse a child's right to education on the basis of their convictions.⁵⁹

In its letter, The Education Board of Presbytery states, in respect of A2P1 ECHR, that "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 is in conformity with their own religious and philosophical convictions". We understand this to raise two issues. First, that an exemption should be provided for in any proposed legislative amendment. Secondly, the basis on which a potential exemption should be granted. There is therefore a balancing exercise to be conducted of the child's right to an education, the parents' right to have their child taught in conformity with their religious and philosophical convictions, if they differ. The Article 9 rights - of a child to manifest their own religious and philosophical belief - are also relevant.

As referred to above, the State has a wide margin of appreciation. There is no direct caselaw on the specific issue of whether the wearing of a skirt is a manifestation of religious and philosophical convictions. Neither is the Commission able to offer any reliable advice on whether different dress for girl pupils is intimately linked to the religion or belief of those who subscribe to the Free Presbyterian Church. That is a matter for the schools advocating for an exemption to establish. If it is, it is then a matter for the State to determine

⁵⁵ See also *Campbell and Cosans v. UK* para. 40.

⁵⁶ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) ECHR 6, at para 51.

⁵⁷ *Kose and Others v Turkey*, application No 26625/02, judgment of 24 January 2006. See also *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, application No 5095/71, judgment of 7 December 1979, at para 50.

⁵⁸ *Kose and Others v Turkey*, application No 26625/02, judgment of 24 January 2006.

⁵⁹ *Konrad and Others v. Germany*

whether and if so how Article 9 is engaged. While subjective beliefs are relevant, it is the State ultimately which determines whether such beliefs can be reasonably understood as a manifestation of belief and whether Article 9 requires their manifestation to be protected.⁶⁰

The second sentence of A2P1 prevents States from pursuing an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. However, the ECtHR has taken the view that the presence of crucifixes in State-school classrooms did not entail a violation of A2P1. The ECtHR observed that while it was true that by prescribing the presence of crucifixes – a sign which undoubtedly referred to Christianity – the regulations conferred on the country's majority religion preponderant visibility in the school environment, that was not in itself sufficient to denote a process of indoctrination on the State's part.⁶¹ A State has a role as a neutral arbiter and must be very careful to ensure that when they permit students to manifest their religious beliefs on school premises, "such manifestation does not become ostentatious and thus a source of pressure and exclusion." Consequently, the fact of refusing access to school to young girls wearing the veil did not constitute a violation of A2P1 since it did not deprive the parents of their right to guide their children on a path in line with the parents' own religious or philosophical convictions, and provided the refusal was foreseeable and proportionate.⁶²

It is also relevant to consider a child's right to private and family life, which includes the right to personal integrity (Article 8 ECHR), and the right to be protected from harm by others (Articles 2 and 3). Should a child be deterred from attending school or at risk of harm by the requirement to wear a skirt and not trousers, this might be a material factor in an individual case

To conclude, the Commission is unable to determine the issue for the Committee but does recognise the duty of the State to carry out a balancing exercise taking into account the rights of the child and the rights of the parent(s) or guardian. In the case of independent schools, the fundamental duty to provide education to children is the same as in public schools, albeit a child and parent can indicate their wish by choosing education in an independent school which has a uniform policy. If it is established that the wearing of skirts by girls does satisfy the test as to manifestation of religious belief, which is not outweighed by the child's right to an education, an exemption is unlikely to be in breach of the first sentence of A2P1 and is likely to be covered by A2P1. If, however, a child expresses that their religious belief requires them to be covered, a requirement to attend school in a skirt is likely to engage the child's right under Article 9 to

⁶⁰ See for example, the UK case of *R (Watkins-Singh) v Aberdare High School* [2008] EWHC 1865 (Admin), at para 56.

⁶¹ *Lautsi and Others v. Italy* (Grand Chamber), [2011] paras. 71-76

⁶² *Kose and Others v. Turkey* *ibid*.

manifest their own religious belief or convictions. The Commission is of the view that to permit such an exemption as advocated by the Free Presbyterian Education Board of Presbytery is, on balance, within the margin of appreciation afforded to the State.

Importantly, however, the Commission's understanding of the Committee's proposal to legislate is to offer girls the *option* to wear trousers to school. Such an amendment could still permit girls to continue to wear skirts to school if that is in line with their faith and they choose to do so.

I hope that this is helpful. If we can provide any further assistance, please do not hesitate to contact me.

Yours sincerely,



Alyson Kilpatrick
Chief Commissioner