

January 2014

---

## ***O'Keeffe v. Ireland [GC] - 35810/09***

Judgment 28.1.2014 [GC]

### **Article 3**

#### **Positive obligations**

Failure by State to put appropriate mechanisms in place to protect National School pupil from sexual abuse by teacher: *violation*

*Facts* – The applicant alleged that she was subjected to sexual abuse by a teacher (LH) in 1973 when she was a pupil in a state-funded National School owned and managed by the Catholic Church. National Schools were established in Ireland in the early nineteenth century as a form of primary school directly financed by the State, but administered jointly by the State, a patron, and local representatives. Under this system the State provides most of the funding and lays down regulations on such matters as the curriculum and teachers' training and qualifications, but most of the schools are owned by clerics (the patron) who appoint a school manager (invariably a cleric). The patron and manager select, employ and dismiss the teachers.

LH resigned from his post in September 1973 following complaints by other pupils of abuse. However, at that stage the Department of Education and Science was not informed about the complaints and no complaint was made to the police. LH moved to another National School, where he continued to teach until his retirement in 1995. The applicant suppressed the abuse to which she had been subjected and it was not until the late 1990s, after receiving counselling following a police investigation into a complaint by another former pupil, that she realised the connection between psychological problems she was experiencing and the abuse she had suffered. She made a statement to the police in 1997. LH was ultimately charged with 386 criminal offences of sexual abuse involving some 21 former pupils of the National School the applicant had attended. In 1998 he pleaded guilty to 21 sample charges and was sentenced to a term of imprisonment.

The applicant was subsequently awarded compensation by the Criminal Injuries Compensation Tribunal and damages in an action against LH. She also brought a civil action in damages alleging negligence, vicarious liability and constitutional responsibility on the part of various State authorities (for technical reasons, she did not sue the Church). However, the High Court rejected those claims in a judgment that was upheld by the Supreme Court on 19 December 2008, essentially on the grounds that the Irish Constitution specifically envisaged a ceding of the actual running of National Schools to interests represented by the patron and the manager, that the manager was the more appropriate defendant to the claim in negligence and that the manager had acted as agent of the Church, not of the State.

In her complaint to the European Court, the applicant complained, *inter alia*, that the State had failed to structure the primary education system so as to protect her from abuse (Article 3 of the Convention) and that she had not been able to

obtain recognition of, and compensation for, the State's failure to protect her (Article 13).

### *Law – Article 3*

(a) *Substantive aspect* – It was an inherent obligation of government to ensure the protection of children from ill-treatment, especially in a primary education context, through the adoption, as necessary, of special measures and safeguards. In this connection, the nature of child sexual abuse was such, particularly when the abuser was in a position of authority over the child, that the existence of useful detection and reporting mechanisms were fundamental to the effective implementation of the criminal law designed to deter such abuse. A State could not absolve itself from its obligations to minors in primary schools by delegating those duties to private bodies or individuals. Nor, if the child had selected one of the State-approved education options (whether a National School, a fee-paying school or home schooling), could it be released from its positive obligation to protect simply because of the child's choice of school.

The Court therefore had to decide whether the State's framework of laws, and notably its mechanisms of detection and reporting, had provided effective protection for children attending a National School against any risk of sexual abuse of which the authorities had, or ought to have had, knowledge at the material time. Since the relevant facts had taken place in 1973, any State responsibility in the applicant's case had to be assessed from the point of view of facts and standards existing at that time, disregarding the awareness society had since acquired of the risk of sexual abuse of minors in an educational context.

It was not disputed that the applicant had been sexually abused by LH or that her ill-treatment fell within the scope of Article 3. There was also little disagreement between the parties as to the structure of the Irish primary school system, which as a product of Ireland's historical experience was unique in Europe with the State providing for education (setting the curriculum, licencing teachers and funding schools) while the National Schools provided the day-to-day management. Where the parties disagreed was on the resulting liability of the State under domestic law and the Convention.

In determining the State's responsibility, the Court had to examine whether the State should have been aware of a risk of sexual abuse of minors such as the applicant in National Schools at the relevant time and whether it had adequately protected children, through its legal system, from such ill-treatment.

The Court found that the State had to have been aware of the level of sexual crime against minors through its prosecution of such crimes at a significant rate prior to the 1970s. A number of reports from the 1930s to the 1970s gave detailed statistical evidence on the prosecution rates in Ireland for sexual offences against children. The Ryan Report of May 2009 also evidenced complaints made to the authorities prior to and during the 1970s about the sexual abuse of children by adults. Although that report focused on reformatory and industrial schools, complaints about abuse in National Schools were also recorded.

Accordingly, when relinquishing control of the education of the vast majority of young children to non-State actors, the State should have adopted commensurate measures and safeguards to protect the children from the potential risks to their safety through, at minimum, effective mechanisms for the detection and reporting of any ill-treatment by and to a State-controlled body.

However, the mechanisms that had been put in place and on which the Government relied were not effective. The 1965 Rules for National Schools and the 1970 Guidance Note outlining the practice to be followed for complaints against teachers did not refer to any obligation on a State authority to monitor a teacher's treatment of children or provide a procedure for prompting children or parents to complain about ill-treatment directly to a State authority. Indeed, the Guidance Note expressly channelled complaints about teachers directly to non-State managers, generally the local priest, as in the applicant's case. Thus, although complaints about LH were in fact made in 1971 and 1973 to the manager of the applicant's school, he did not bring them to the notice of any State authority. Likewise, the system of school inspectors, on which the Government also relied, did not specifically refer to any obligation on the inspectors to inquire into or monitor a teacher's treatment of children, their task principally being to supervise and report on the quality of teaching and academic performance. While the inspector assigned to the applicant's school had made six visits from 1969 to 1973, no complaint had ever been made to him about LH. Indeed, no complaint about LH's activities was made to a State authority until 1995, after LH had retired. The Court considered that any system of detection and reporting which allowed over 400 incidents of abuse by a teacher to occur over such a long period had to be considered to be ineffective.

Adequate action taken on the 1971 complaint could reasonably have been expected to avoid the applicant being abused two years later by the same teacher in the same school. Instead, the lack of any mechanism of effective State control against the known risks of sexual abuse occurring had resulted in the failure by the non-State manager to act on prior complaints of sexual abuse, the applicant's later abuse by LH and, more broadly, the prolonged and serious sexual misconduct by LH against numerous other students in the same National School. The State had thus failed to fulfil its positive obligation to protect the applicant from sexual abuse.

*Conclusion:* violation (eleven votes to six).

(b) *Procedural aspect* – As soon as a complaint of sexual abuse by LH of a child from the National School was made to the police in 1995, an investigation was opened during which the applicant was given the opportunity to make a statement. The investigation resulted in LH being charged on numerous counts of sexual abuse, convicted and imprisoned. The applicant had not taken issue with the fact that LH was allowed to plead guilty to representative charges or with his sentence.

*Conclusion:* no violation (unanimously).

Article 13 in conjunction with Article 3: The applicant had been entitled to a remedy establishing any liability of the State. Accordingly, the proposed civil remedies against other individuals and non-State actors on which the Government had relied must be regarded as ineffective in the present case, regardless of their chances of success. Equally, while central to the procedural guarantees of Article 3, LH's conviction was not an effective remedy for the applicant within the meaning of Article 13.

As to the alleged remedies against the State, it had not been shown that any of the national remedies (the State's vicarious liability, a claim against the State in direct negligence or a constitutional tort claim) was effective as regards the applicant's complaint concerning the State's failure to protect her from abuse.

*Conclusion:* violation (eleven votes to six).

Article 41: Global award of EUR 30,000 in respect of both pecuniary and non-pecuniary damage, having regard to the financial compensation the applicant had already received and the uncertainties about any future payments by LH.

---

© Council of Europe/European Court of Human Rights  
This summary by the Registry does not bind the Court.

Click here for the [Case-Law Information Notes](#)