EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Structure of primary education in Ireland in the 1970s failed to protect a schoolgirl from sexual abuse by her teacher

In today's Grand Chamber judgment in the case of **O'Keeffe v. Ireland** (application no. 35810/09), which is final[1], the European Court of Human Rights held:

by 11 votes to 6, that there had been **a violation of Article 3 (prohibition of inhuman and degrading treatment)** and of **Article 13 (right to an effective remedy)** of the European Convention on Human Rights concerning the Irish State's failure to protect Ms O'Keeffe from sexual abuse and her inability to obtain recognition at national level of that failure; and

unanimously, that there had been **no violation of Article 3** of the European Convention as regards the investigation into the complaints of sexual abuse at Ms O'Keeffe's school.

The case concerned the question of the responsibility of the State for the sexual abuse of a schoolgirl, aged nine, by a lay teacher in an Irish National School in 1973.

The Court found that it was an inherent obligation of a Government to protect children from ill-treatment, especially in a primary education context. That obligation had not been met when the Irish State, which had to have been aware of the sexual abuse of children by adults prior to the 1970s through, among other things, its prosecution of such crimes at a significant rate, nevertheless continued to entrust the management of the primary education of the vast majority of young Irish children to National Schools, without putting in place any mechanism of effective State control against the risks of such abuse occurring. On the contrary, potential complainants had been directed away from the State authorities and towards the managers (generally the local priest) of the National Schools. Indeed, any system of detection and reporting of abuse which allowed over 400 incidents of abuse to occur in Ms O'Keeffe's school for such a long time had to be considered ineffective.

Principal facts

The applicant, Louise O'Keeffe, is an Irish national who was born in 1964 and lives in Cork (Ireland).

From 1968 onwards Ms O'Keeffe went to a National School, as did the majority of Irish children. National schools are State-funded primary schools which are privately managed under religious (mainly Catholic) patronage. Ms O'Keeffe's school, Dunderrow National School, was owned by the Catholic Diocese of Cork and Ross, its Patron was the Bishop of Cork and Ross and it was managed by a priest (Ó) on behalf of an Archdeacon.

In 1971 a parent of a child complained to Ó that the Dunderrow school principal (LH), a lay teacher, had sexually abused her daughter. Further complaints were made in 1973. Following a parents' meeting chaired by Ó, LH went on sick leave and then resigned in September of that year. In January 1974 Ó informed the then Department of Education and Science of LH's resignation. The Department was not informed about the complaints against LH and no complaint was made to the

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

police at that point. LH then went to another national school, where he taught until his retirement in 1995.

From January to mid-1973 Ms O'Keeffe was subjected to a number of sexual assaults by LH. While she later had some psychological difficulties, she did not associate those with the abuse. She suppressed the sexual abuse. In the course of a criminal investigation into a complaint against L.H. by a former pupil at Dunderrow in the mid-1990s, Ms O'Keeffe was contacted by the police and she made a statement to them in January 1997. She was referred for counselling. During the investigation a number of other pupils of the school made statements about abuse by LH. He was charged with 386 criminal offences of sexual abuse involving some 21 former pupils of Dunderrow National School. In 1998 he pleaded guilty to 21 sample charges and was sentenced to imprisonment.

Having heard evidence from other victims during LH's criminal trial and following medical treatment, Ms O'Keeffe realised the connection between her psychological problems and the abuse by LH. In October 1998 she applied to the Criminal Injuries Compensation Tribunal for compensation and was awarded 53,962.24 euros (EUR). In September 1998 she also brought a civil action against LH, the then Minister for Education and Science, as well as against Ireland and the Attorney General, claiming damages for personal injuries suffered as a result of assault and battery including sexual abuse. She claimed: that the State had failed to put in place appropriate measures and procedures to prevent and stop LH's systematic abuse; that the State was vicariously liable as the employer of LH; and, that the State was responsible as the educational provider under Article 42 of the Constitution.

LH did not defend the civil action so in October 2006 the High Court ordered him to pay Ms O'Keeffe EUR 305,104 in damages. Following enforcement proceedings, in which LH claimed he had insufficient means, he was ordered to pay Ms O'Keeffe EUR 400 a month. She has, to date, recovered in the region of EUR 30,000.

In March 2004 the High Court summarily dismissed the claims of direct negligence against the State. In January 2006 the High Court further held that the State was not vicariously liable for the sexual assaults by LH and dismissed her constitutional claim.

In December 2008 the Supreme Court dismissed Ms O'Keeffe's appeal on the vicarious liability point. The Supreme Court found that the Irish primary school system had to be understood in the specific context of early 19th Century history and that, while the State funded the system, the management role of the church was such that the State could not be held vicariously liable for the acts of the teacher in question.

Complaints, procedure and composition of the Court

Ms O'Keeffe complained that the Irish State had failed both to structure the primary education system so as to protect her from abuse as well as to investigate or provide an appropriate judicial response to her ill-treatment. She also claimed that she had not been able to obtain recognition of, and compensation for, the State's failure to protect her. She relied on Article 3 (prohibition of inhuman and degrading treatment) and Article 13 (right to an effective remedy). She further complained of violations of Article 8 (right to respect for private life) and Article 2 of Protocol No. 1 (right to education), alone and in conjunction with Article 14 (prohibition of discrimination), arguing that the sexual abuse had caused her significant relationship, sexual and marital problems and that she had suffered discrimination given the refusal to compensate victims of abuse in National Schools

while accepting to do so as regards abuse victims from reformatory or industrial schools[2]. She also complained, invoking Article 6 (fair trial) alone and in conjunction with Article 13, that her civil action had been excessively long and that she had no domestic remedy in that regard.

The application was lodged with the European Court of Human Rights on 16 June 2009. On 26 June 2012 the Chamber unanimously struck out her complaints about the length of her civil action and about the lack of an effective domestic remedy in that regard, because a friendly settlement had been reached between the parties on those issues. The Chamber declared admissible the remaining complaints.

On 20 September 2012 the Chamber relinquished jurisdiction as regards those remaining complaints in favour of the Grand Chamber. A hearing took place in public before the Grand Chamber in the Human Rights Building, Strasbourg, on 6 March 2013.

The Irish Human Rights Commission and the European Centre for Law and Justice were authorised to intervene as third party (under Article 36 § 2 of the Convention) in the written procedure.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Nona **Tsotsoria** (Georgia),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta),
Angelika **Nußberger** (Germany),
André **Potocki** (France),
Krzysztof **Wojtyczek** (Poland),
Valeriu **Griţco** (the Republic of Moldova) and,
Peter **Charleton** (Ireland)*, ad hoc Judge*,

and also Michael **O'Boyle**, *Deputy Registrar.*

Decision of the Court

Article 3 (ill-treatment)

The Court acknowledged that, when examining this case, it had to assess any State responsibility from the point of view of facts and standards of 1973 and, notably, disregarding the awareness in society today of the risk of sexual abuse of minors in an educational context. That awareness is the result of recent public controversies on the subject, including in Ireland. The Court also acknowledged that the model of primary education in Ireland, a product of its historical experience, was unique in Europe with the State providing *for* education (setting the curriculum, licencing

[2] Reformatory and industrial schools were established in the 1850s/60s. The great majority of children were committed to industrial schools by a court because they were "needy" and the next most frequent grounds of entry were involvement in a criminal offence or non-attendance at school. These schools went into decline in the 1970s. Following public controversies in the 1980s and early 1990s about clerical child abuse in Ireland, the Ryan Commission investigated. In May 2009 it reported widespread, chronic and severe physical (including sexual) abuse of children mainly by the clergy in the reformatory and industrial schools.

teachers and funding schools) and the day-to-day management of primary education being provided *by* National Schools.

The Court went on to recall that young children are vulnerable, and it was an inherent obligation of a Government to protect them from ill-treatment, especially in primary education when they are under the exclusive control of school authorities, by adopting special measures and safeguards. A State could not absolve itself from that obligation by delegating to private bodies or individuals. Nor could it be freed from that obligation since, as suggested by the Government, Ms O'Keeffe could have chosen alternative schooling options such as home schooling or fee-paying schools. Primary education was obligatory under national law and Ms O'Keeffe had no realistic and acceptable alternative at the time other than to attend her local National School, along with the vast majority of children of her age.

The crucial question in this case was not the responsibility of LH, of a clerical Manager or Patron, of a parent or of any other individual for the sexual abuse to which Ms O'Keeffe was subjected in 1973. Rather the case concerned the State's responsibility and whether it 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.

On the first point, 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 recorded.

Despite this awareness, the Irish State continued to entrust the management of the primary education of the vast majority of young Irish children to privately managed National Schools, without putting in place any mechanism of effective State control.

The Government maintained that certain mechanisms of detection and reporting had been in place. However, the Court did not consider these to be effective.

In the first place, the Government pointed to the 1965 Rules for National Schools and the 1970 Guidance Note outlining the practice to be followed for complaints against teachers. However, neither referred to any obligation of the authorities to monitor a teacher's treatment of children nor provided a procedure for prompting a child or parent to complain about ill-treatment directly to a State authority. Indeed, the Guidance Note specifically channelled complaints directly to non-State Managers, generally the local priest as in Ms O'Keeffe's case. Complaints had in effect been made in 1971 and 1973 about LH to the Manager of Ms O'Keeffe's school but the Manager had not brought those complaints to the notice of any State authority.

Secondly, the system of School Inspectors, also relied upon by the Government, did not refer to any obligation on 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 Ms O'Keeffe's school in Dunderrow 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 had been 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 LH 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 Ms O'Keeffe being abused two years later by the same teacher in the same school.

In sum, in Ms O'Keeffe's case, the consequences of a lack of protection from abuse had been the failure by the non-State Manager to act on prior complaints of sexual abuse by LH, Ms O'Keeffe's later abuse by LH and, more broadly, the prolonged and serious sexual misconduct by LH against numerous other students in that same National School.

Therefore, the Irish State had failed to meet its obligation to protect Ms O'Keeffe from the sexual abuse to which she had been subjected in 1973 whilst a pupil in Dunderrow National School, in violation of Article 3.

Article 3 (investigation)

As soon as a complaint about sexual abuse by LH of a child from Dunderrow National School was made to the police in 1995, an investigation was opened during which Ms O'Keeffe had been given the opportunity to make a statement. The investigation resulted in LH being charged on numerous counts concerning sexual abuse, convicted and imprisoned. Ms O'Keeffe had not taken issue with the fact that LH was allowed to plead guilty to representative charges or with his sentence. Therefore, the Court found that there had been no violation of Article 3 as regards the investigation into complaints of sexual abuse at Ms O'Keeffe's school.

Article 13 (recognition at national level of the failure to protect Ms O'Keeffe from abuse) in conjunction with Article 3

The Court considered that it had not been shown that any of the national remedies on which the Government had relied (the State's vicarious liability, a claim against the State in direct negligence or a constitutional tort claim) had been effective as regards Ms O'Keeffe's complaint about the failure to protect her from abuse. There had therefore been a violation of Article 13.

Other articles

The Court held that the complaints under Article 8, Article 2 of Protocol No. 1 and Article 14 did not give rise to any issues separate to those already examined.

Article 41 (just satisfaction)

The Court held, by eleven votes to six, that Ireland was to pay Ms O'Keeffe 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 85,000 for costs and expenses.

Separate opinions

Judge Ziemele expressed a concurring opinion; Judges Zupančič, Gyulumyan, Kalaydjieva, de Gaetano and Wojtyczek expressed a joint partly dissenting opinion; and, Judge Charleton expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.