

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



21 May 2012

**SECOND REPORT
ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER**

IRELAND

Document prepared by the Secretariat

I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002¹ decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

As Ireland ratified the Revised Charter on 4 November 2000, the procedure provided by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Irish ministries in Dublin on 4 and 5 October 2005.

Following this meeting, the European Committee of Social Rights delegation at the time concluded that acceptance seemed possible in respect of 2 provisions (Article 8§3 - Time off for nursing mothers and Article 27 1c - Child care facilities for workers with family responsibilities). In respect of a further 2 provisions (Article 21 –Right to information and consultation and Article 31 – Right to housing) it found that they could not be accepted but should be kept under review.²

With a view to carrying out the procedure for the second time in 2010 the Irish authorities were invited to provide written information on the non-accepted provisions before 30 June 2010. Regrettably, no information was ever submitted.

The Committee remains at the disposal of the Irish authorities, and encourages the authorities to consider acceptance of the non-accepted Charter provisions identified in 2005 as posing no problems for acceptance.

The next examination of the provisions not accepted by Ireland will take place in 2015.

¹ Committee of Ministers decision of 11 December 2002.

² Reference to the 2005 report (our website)

APPENDIX 1

IRELAND AND THE EUROPEAN SOCIAL CHARTER

Situation of Ireland as of March 2012

Ratifications

Ireland ratified the European Social Charter on 07/10/1964 and the Revised European Social Charter on 04/11/2000, accepting 92 of the 98 paragraphs of the Revised Charter.

Ireland ratified the Additional Protocol providing for a system of collective complaints procedure on 04/11/2000. It has not yet made a declaration enabling national NGOs to submit collective complaints.

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1 ¹	27.2	27.3	28	29	30	31.1
31.2	31.3						Grey = Accepted provisions				

¹ Sub-paragraph c.

Charter in domestic law

Ireland is a dualist state.

Reports

Between 1966 and 2012, Ireland submitted 21 reports on the application of the Charter and 9 reports on the application of the Revised Charter.

The [8th report](#) which was submitted on 8 June 2011, concerns the accepted provisions relating to Thematic Group 4 "Children, families and migrants" (Article 7, 8§§1, 2, 4 and 5, 16, 17, 19 and 27§§1 sub-paragraph c, 2 and 3). Conclusions in respect of these provisions were published in January 2012.

The [9th report](#) which was submitted on 14 October 2011 concerns the accepted provisions relating to Thematic Group 1 "Employment, training and equal opportunities", i.e.

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Conclusions in respect of these provisions will be published in December 2012.

* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Ireland with respect to the application of the Revised Charter

Examples of progress achieved in the implementation of social rights under the Social Charter¹

Employment

- ▶ Introduction of a statutory minimum wage (2000 Act on the National Minimum Wage).
- ▶ Repeal of section 9 of the 1939 Offences Against the State Act, which allows the prosecution of public service officials and employees for taking strike action.

Health/Education

- ▶ The Protection of Young Persons (Employment) Act, 1996 sets out a broader definition of a child for the purpose of employment by including all persons under the age of 16 years or, if higher, still subject to compulsory education. The limits on working time for children aged 14 and 15 are set at 7 hours per day and 35 hours per week.

Non-discrimination (Employment)

- ▶ Employment Equality Act 2004 strengthens protection against discrimination in employment.

Non-discrimination (Birth)

- ▶ Elimination of discrimination against children born out of wedlock in respect of custody, and the right of ownership and succession (1987 Status of Children Act).

Non-discrimination (Disability)

- ▶ Equal Status Act 2000 and the Disability Act 2005 together provide a general legal framework on social integration of persons with disabilities and their judicial protection in case of discrimination.

Movement of persons

- ▶ The power of the Minister of the Interior to issue expulsion orders has been restricted in that he must take account of the age, family status, employment prospects and length of stay of the person concerned (1999 Immigration Act).

Cases of non-compliance

Thematic group 1 "Employment, training and equal opportunities"

- ▶ *Article 1§2 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

- there are upper limits on the amount of compensation that may be awarded in discrimination (with the exception of gender discrimination cases) cases;
- an excessive length of compulsory service may be required of army officers.

[\(Conclusions 2006\)](#)

- ▶ *Article 1§4 - Right to work - Vocational guidance, training and rehabilitation (Article 9 and Article 10§§1 and 3)*

Access to vocational guidance, higher education and to continuing training is subject to a length of residence requirement for nationals from other States Parties

[\(Conclusions 2007\)](#)

¹ 1 « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

► *Article 10§5 – Droit à la formation professionnelle – Pleine utilisation des moyens disponibles*
Equal treatment for nationals of other States Parties is not guaranteed with respect to fees and financial assistance for training.
([Conclusions 2007](#))

► *Article 18§2 - Right to engage in a gainful occupation in the territory of other States Parties - Simplifying existing formalities and reducing dues and taxes*
Existing formalities in respect of the issuing and renewal of work permits were not simplified, during the reference period.
([Conclusions 2007](#))

Article 18§3 - Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations
Absence of measures to liberalise the regulations governing the employment of foreign workers.
([Conclusions 2007](#))

Thematic group 2 : “Health, social security and social protection”

► *Article 11§3- Prevention of diseases and accidents - Right to protection of health*
- it has not been demonstrated that adequate measures are in place to prevent the risks arising from asbestos
- it has not been demonstrated that adequate measures are in place to prevent and reduce accidents.
([Conclusions 2009](#))

► *Article 12§1 – Right to social security - Existence of a social security system*
- the minimum sickness benefit is inadequate.
- the minimum unemployment benefit is inadequate.
- the minimum survivors’ benefit is inadequate.
- the minimum employment injury benefit is inadequate.
- the minimum invalidity benefit is inadequate.
([Conclusions 2009](#))

► *Article 12§4 - Right to social security - Social security of persons moving between states*
Legislation does not provide for the accumulation of insurance or employment periods completed by the nationals of States Parties not covered by Community regulations or bound by agreement with Ireland.
([Conclusions 2009](#))

Thematic group 3: “Labour rights”

► *Article 2§1 – Right to just conditions of work - Reasonable working time*
Legislation on working hours permits a 72 hour working week in the merchant shipping sector.
([Conclusions 2007](#))

► *Article 4§1 - Right to a fair remuneration - Decent remuneration*
The minimum wage falls below 60% of the average wage and information on net average wage is not provided.
([Conclusions 2007](#))

► *Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment*
1. The minimum statutory notice periods provided for in law (ranging from 1 to 8 weeks) are not adequate¹.
2. Established civil servants do not receive a notice period but instead a 14-day period during which the person concerned may make representations against a proposed dismissal.
([Conclusions 2007](#))

¹ RecChS(1995)6 adopted by the Committee of Ministers on 22 June 1995

► *Article 4§5 – Right to a fair remuneration - Limits to deduction from wages*

Workers may waive their right to limited deductions from wages; and deductions from wages may deprive workers of their very means of subsistence.

([Conclusions 2007](#))

► *Article 5 – Right to organise*

1. Certain closed shop practices are permitted in law;
2. National law does not fully protect workers against dismissal on the ground of trade union membership or activities.

([Conclusions 2006](#))

► *Article 6§4 – Right to bargain collectively*

Only authorised trade unions (i.e. those holding a negotiation licence) and their members are afforded immunity against civil action in the event of a strike and, under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in strike action.¹

([Conclusions 2006](#))

Thematic group 4: “Children, families and migrants”

► *Article 7§1 – Right of children and young persons to protection - Prohibition of employment under the age of 15*

Children employed by a close relative are not afforded the protection required by this provision of the Revised Charter.

([Conclusions 2011](#))

► *Article 7§3 – Right of children and young persons to protection - Prohibition of employment of children subject to compulsory schooling*

The mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they may benefit from such education and children employed by a close relative are not afforded the protection required.²

([Conclusions 2011](#))

► *Article 7§4 - Right of children and young persons to protection - Working time*

The Committee is unable to assess whether the working hours of the great majority of persons under 18 are limited in accordance with the needs of their development

([Conclusions 2011](#))

► *Article 7§5 – Right of children and young persons to protection - Fair pay*

1. The minimum net wage is manifestly inadequate;
2. The rate paid to young workers between 16 and 18 years is too low; and
3. Young persons working for close relatives are not covered by the Minimum Wage Act.

([Conclusions 2011](#))

► *Article 7§8- Right of children and young persons to protection - Prohibition of night work*

The Committee is unable to assess whether children employed by a close relative are prohibited from performing night work.

([Conclusions 2011](#))

► *Article 8§1 – Right of employed women to protection of maternity - Maternity leave*

The amount of maternity benefit is manifestly too low

([Conclusions 2011](#))

¹ RecChS(2001)2 adopted by the Committee of Ministers on 7 February 2001.

² RecChS(95)6 adopted by the Committee of Ministers on 22 June 1995.

► *Article 8§2 – Right of employed women to protection of maternity - Illegality of dismissal*

1. It has not been established that there is adequate protection against unlawful dismissals during pregnancy or maternity leave;
2. It has not been established that reinstatement or adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

([Conclusions 2011](#))

► *Article 17§1 - Right of children and young persons to social, legal and economic protection – Assistance, education and training*

1. Young prisoners are not always separated from adults;
2. The age of criminal responsibility is too low for some offences;
3. Corporal punishment of children is not explicitly prohibited in the home

([Conclusions 2011](#))

► *Article 19§6 - Right of migrant workers and their families to protection and assistance- Family reunion*

It has not been established that migrant workers receiving social benefits are not precluded from the right of family reunion.

([Conclusions 2011](#))

► *Article 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation; - Equal treatment for the self-employed*

Migrant workers have no right of appeal against a deportation order.

([Conclusions 2011](#))

► *Article 19§12 – Right of migrant workers and their families to protection and assistance - Teaching mother tongue of migrant*

It has not been established that Ireland promotes and facilitates the teaching of the migrant worker's mother tongue to the children of migrant workers.

([Conclusions 2011](#))

► *Article 27§1 - Right of workers with family responsibilities to equal opportunity and treatment - Participation in working life*

Periods of parental leave are not taken into account in the calculation of pension

([Conclusions 2011](#))

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Irish Government to provide more information in the next report in respect of the following provisions:

Thematic group 1 “Employment, training and equal opportunities”

(Report to be submitted by 31/10/2011)

- Article 10§4 – Conclusions 2008
- Article 15§3 – Conclusions 2008
- Article 18§1 – Conclusions 2008

Thematic group 2 : “Health, social security and social protection”

(Report to be submitted by 31/10/2012)

- Article 3§4 – Conclusions 2009
- Article 14§§1 and 2 – Conclusions 2009

Thematic group 3: “Labour rights”

(Report to be submitted by 31/10/2013)

- Article 2§4 – Conclusions 2007
- Article 4§2 – Conclusions 2007
- Article 6§2 – Conclusions 2006
- Article 29 – Conclusions 2007

Thematic group 4: “Children, families and migrants”
(Report to be submitted by 31/10/2013)

- ▶ Article 7§§2 and 7 – Conclusions 2011
- ▶ Article 17§2 – Conclusions 2011
- ▶ Article 19§4 – Conclusions 2011
- ▶ Article 27§3 – Conclusions 2011

Collective Complaints and State of Procedure in Ireland¹

Collective complaints (under examination)

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Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

▶ *International Federation for Human Rights v. Ireland (No. 41/2006)*
No violation.

2. Complaints where the Committee has found a violation which has been remedied

▶ *World Organisation Against Torture (OMCT) v. Ireland (No. 18/2003)* : Violation of Article 17 (children's right to social, economic and legal protection), decision on the merits of 8 December 2004.

3. Complaints where the Committee has found a violation which has not yet been remedied

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¹ The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the [Collective Complaint webpage](#). Searches on complaints may also be carried out in the [European Committee of Social Rights Caselaw database](#).

APPENDIX 2



Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

*(Adopted by the Committee of Ministers on 12 October 2011
at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 (“the Charter”);

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.