



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

6 May 2016

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

IRELAND

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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 2002 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" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned, with a view to securing a higher level of acceptance. This review would be done for the first time five years after the ratification of the revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that Governments tend to overlook that the selective acceptance of the provisions of the Charter should be a temporary phenomenon.

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 immediately but should be kept under review.

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. However, no information was submitted.

The procedure was to be carried out for the third time in 2015 and the Committee invited the Irish authorities to provide written information before 29 May 2015. Again no information was provided. The Committee wishes to emphasise that the procedure provided for by Article 22 of the 1961 in combination with the above-mentioned decision of the Committee of Ministers entails an obligation on the States concerned to report on the non-accepted provisions every five years and it sincerely regrets that Ireland has not fulfilled this obligation.

Nevertheless, the Committee remains at the disposal of the Irish authorities for a dialogue and encourages Ireland to accept additional provisions, in particular those for which the Committee concluded already in 2005 that there were no obstacles to acceptance.

As Ireland is bound by the collective complaints procedure the Committee would also like to invite it to consider making the declaration pursuant to Article 2 of the 1995 Additional Protocol in order to allow representative national non-governmental organisations the possibility of lodging complaints.

The next examination of the provisions not accepted by Ireland will take place in 2020.

— Ireland and the European Social Charter —

Signatures, ratifications and accepted provisions

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.

Charter in domestic law

Ireland is a dualist state.

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 not accepted.

Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Ireland](#) in 2005, 2012 and 2016. The Committee considers that acceptance of 2 provisions is possible (Article 8§3 - Time off for nursing mothers and Article 27 1c - Child care facilities for workers with family responsibilities).

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

Monitoring the implementation of the European Social Charter ¹

I. Collective complaints procedure ²

Collective complaints (under examination)

European Organisation of Military Associations (EUROMIL) v. Ireland (Complaint No. 112/2014)
The Committee [declared](#) the complaint admissible on 30 June 2015.

International Federation for Human Rights (FIDH) v. Ireland (Complaint No. 110/2014)
The Committee [declared](#) the complaint admissible on 17 March 2015.

European Roma Rights Centre (ERRC) v. Ireland (Complaint No. 100/2013)
The Committee [declared](#) the complaint admissible on 21 October 2013.

Collective complaints (proceedings completed)

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

Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland (Complaint No. 89/2013)

- No violation of Article 7§10 (the right of children and young persons to protection)

[Decision on the merits of 12 September 2014.](#)

Follow up:

- [Resolution Res/CM ChS \(2015\)1 on 18 February 2015](#) of the Committee of Ministers.

International Federation of Human Rights (FIDH) v. Ireland (Complaint No. 42/2007)

- No violation of Articles 23 (the right of elderly persons to social protection) and 12§4 (the right to social security) in conjunction with Article E (non-discrimination).

[Decision on the merits of 3 June 2008.](#)

Follow up:

- [Resolution CM/ResChS\(2008\)9 on 21 January 2009](#) of the Committee of Ministers.

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

¹ The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 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 ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

² Detailed information on the Collective Complaints Procedure is available on the [relevant webpage](#).

3. Complaints where the Committee has found a violation and where progress has been made but not yet examined by the Committee

Association for the Protection of All Children (APPROACH) Ltd v. Ireland (Complaint No. 93/2013)

- Violation of Article 17§1 (the right of children and young persons to social, legal and economic protection)

Decision on the merits of 2 December 2014.

Follow up:

- Resolution Res/CM ChS (2015)9 on 17 June 2015 of the Committee of Ministers.

World Organisation against Torture (OMCT) v. Ireland (No. 18/2003)

- Violation of Article 17 (the right of children and young persons to social, legal and economic protection)

Decision on the merits of 7 December 2004.

Follow up:

- Resolution ResChS(2005)9 on 8 June 2005 of the Committee of Ministers.

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

European Confederation of Police (EuroCOP) v. Ireland (Complaint No. 83/2012)

- Violation of Articles 5 (the right to organise);
- Violation of Article 6§§2-4 (the right to bargain collectively - negotiation procedures);

Decision on the admissibility and the merits of 2 December 2013.

Follow up:

- Resolution Res/CM ChS (2014) 12 on 8 October 2014 of the Committee of Ministers.

II. Reporting system³

Reports submitted by Ireland

Between 1966 and 2015, Ireland has submitted 21 reports on the application of the 1961 Charter and 13 reports on the application of the Revised Charter.

The [13th report](#), submitted by 13/12/2015, concerns the accepted provisions relating to Thematic Group 1 "Employment, training and equal opportunities", namely:

- 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).

In addition, the report should provide the information required by the Committee in the framework of Conclusions 2014 relating to Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29 of the Revised Charter), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be published in January 2017.

³ Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the 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. Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

Situations of non-conformity ⁴

Thematic group 1 "Employment, training and equal opportunities" - Conclusions 2012

► *Article 152 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

- The upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may preclude damages from making good the loss suffered and from being sufficiently dissuasive;

- army officers can not seek early termination of their commission unless they repay to the state at least part of the cost of their education and training, and the decision to grant early retirement is left to the discretion of the Minister of Defence, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

► *Article 154 - Right to work - Vocational guidance, training and rehabilitation (Article 9 and Article 10§§1 and 3)*

- Access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed;

- there is indirect discrimination of nationals of other States Parties residing or working lawfully in the country due to the length of residence condition for access to continuing vocational training.

► *Article 9- Right to vocational guidance*

Access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed.

► *Article 10§1 Promotion of technical and vocational training; access to higher technical and university education*

Indirect discrimination of nationals of other states party due to the length of residence requirements.

► *Article 10§3 - Vocational training and retraining of adult workers*

Indirect discrimination of nationals of other states party residing or working lawfully in the country due to the length of residence condition for access to continuing education.

► *Article 10§5 – Right to vocational training - Full use of facilities available*

Equal treatment for nationals of other States Parties is not guaranteed with respect to fees and financial assistance for training.

► *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*

The fees for work permits are excessive.

► *Article 24- Right to protection in case of dismissal*

Legislation permits the exclusion of employees from protection against dismissal for one year during the probationary period and employees having reached the normal retiring age are excluded from the protection of the Unfair Dismissals legislation which goes beyond what is permitted by the Appendix to the Charter.

Thematic group 2: "Health, social security and social protection" - Conclusions 2013

► *Article 354 Right to safe and healthy working conditions - Occupational health services*

There is no strategy to develop occupational health services for all workers. **(Conclusions 2015)**

► *Article 11§3- Prevention of diseases and accidents - Right to protection of health*

- It has not been established that adequate measures are in place to prevent and reduce accidents. **(Conclusions 2015)**

► *Article 12§1 – Right to social security - Existence of a social security system*

⁴ Further information on the situations of non-conformity is available on the [HUDOC database](#).

- Minimum levels of sickness, unemployment, survivor's, employment injury and invalidity benefits are inadequate.

► *Article 12§4 - Right to social security - Social security of persons moving between states*

The right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

► *Article 13§1 - Right to social and medical assistance - Adequate assistance for every person in need*

It is not established that foreign nationals without resources, legally residing in Ireland, have adequate access to healthcare.

► *Article 13§4 - Right to social and medical assistance- Specific emergency assistance for non-residents*

It does not find it established that all foreign nationals, legally or irregularly present in Ireland, have adequate access to emergency medical assistance.

► *Article 14§1- Right to benefit from social services - Promotion or provision of social services*

it has not been established that there is an effective and equal access to social welfare services and the quality of social welfare services meets users' needs. **(Conclusions 2015)**

► *Article 14§2- Right to benefit from social services - Public participation in the establishment and maintenance of social services*

It has not been established that the quality of social services delivered by non-state providers meets users' needs.

Thematic group 3: "Labour rights" - Conclusions 2014

► *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.

► *Article 2§4 - Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations*

It has not been established that workers exposed to occupational health risks, despite the existing risk elimination policy, are entitled to appropriate compensation measures.

► *Article 2§5 - Right to just conditions of work – weekly rest period*

There are inadequate safeguards to prevent workers from working for more than twelve consecutive days without a rest period.

► *Article 4§1 - Right to a fair remuneration - Decent remuneration*

The reduced national minimum wage applicable to adult workers on their first employment or following a course of studies is not sufficient to ensure a decent standard of living.

► *Article 4§2 - Right to a fair remuneration – Increased remuneration for overtime work*

It has not been established that the right to an increased remuneration for overtime work is guaranteed to all workers.

► *Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment*

The periods of notice applicable to employees and civil servants are inadequate.

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

1. The safeguards preventing workers from waiving their right to limits to wage deductions are inadequate;
2. after authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

► *Article 5 – Right to organise*

1. Certain closed shop practices are authorised by law;
2. the national legislation does not protect all workers against dismissal on grounds of membership of a trade union or involvement in trade union activities;
3. police representative associations are prohibited from joining national employees' organisations.

► *Article 6§2 – Negotiation Procedures*

The legislation and practice fail to ensure the sufficient access of police representative associations into pay agreement discussions.

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

1. Only authorised trade unions, which are trade unions holding a negotiation licence, their officials and members are granted immunity from civil liability in the event of a strike;
2. under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike;
3. the absolute prohibition of the right to strike of police forces goes beyond the conditions established by Article G of the Charter.

Thematic group 4: “Children, families and migrants” - Conclusions 2011

► *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.

► *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.⁵

► *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.

► *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.

► *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.

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

The amount of maternity benefit is manifestly too low.

► *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.

► *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.

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

⁵ RecChS(2001)2 adopted by the Committee of Ministers on 7 February 2001.

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

▶ *Article 19§8 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation;*

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

▶ *Article 19§10 – Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*

The Committee concludes that the situation in Ireland is not in conformity with Article 19§10 of the Charter on the same grounds on which it is not in conformity with paragraphs 6, 8 and 12 of the same Article.

▶ *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.

▶ *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.

The Committee 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”

- ▶ Article 1§1 - Conclusions 2012
- ▶ Article 1§3 - Conclusions 2012
- ▶ Article 15§3 - Conclusions 2012
- ▶ Article 18§1 - Conclusions 2012
- ▶ Article 18§3 - Conclusions 2012
- ▶ Article 25 - Conclusions 2012

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

- ▶ Article 3§1 - Conclusions 2013
- ▶ Article 3§2 - Conclusions 2013
- ▶ Article 3§3 - Conclusions 2013
- ▶ Article 11§1 - Conclusions 2013
- ▶ Article 11§2 - Conclusions 2013
- ▶ Article 12§3 - Conclusions 2013
- ▶ Article 23 - Conclusions 2013

Thematic group 3: “Labour rights”

- ▶ Article 22 - Conclusions 2014

Thematic group 4: “Children, families and migrants”

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

III. Examples of progress achieved in the implementation of the rights under the Charter

(update in progress)

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.
- ▶ The Employees (Provision of Information and Consultation) Act 2006, the Transnational Information and Consultation of Employees Act 1996, European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006, the European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 and the European Communities (Cross-Border Mergers) Regulations 2008 provide, inter alia, protection for workers' representatives against reprisal or victimisation.
- ▶ The Employees (Provision of Information and Consultation) Act 2006, the Transnational Information and Consultation of Employees Act 1996, the European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006, the European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 and the European Communities (Cross-Border Mergers) Regulations 2008 provide for access to facilities for the execution of workers' representatives' functions.
- ▶ The Protection of Employment Act of 2007 introduced additional protection for employees in collective redundancy situations.

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.
- ▶ The Safety, Health and Welfare at Work (General Application) Regulations 2007, provide that night-workers shall have available a medical practitioner before and at regular intervals during employment as a night worker, to assess in relation to any adverse effects of that night work.

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.

Sexual and Moral Harassment

- ▶ A revised Code of Practice on Sexual Harassment and Harassment at Work was published by the Equality Authority in 2012, the Code is admissible in any employment dispute in which it appears relevant, and contains a list of forms of behaviour which may be regarded as acts of sexual harassment.

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).

APPENDIX II

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;

Emphasizing 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. Recognizes 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.