



Strasbourg, 8 April 2005

T-SG (2004) 27

**GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER**

**THE REPORT CONCERNING THE  
ADDENDUM TO CONCLUSIONS XVI-2**

*Detailed report of the Governmental Committee  
established by Article 27, paragraph 3, of the European Social Charter<sup>1</sup>*

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<sup>1</sup> The detailed report and the abridged report are available on [www.coe.int/T/E/Human\\_Rights/Esc](http://www.coe.int/T/E/Human_Rights/Esc).



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## I. INTRODUCTION

1. This addendum to the report on the European Social Charter (Conclusions XVI-2) concerns Ireland and Luxembourg.
2. The reports from these two states were due to be submitted to the Secretary General of the Council of Europe before 31 March 2002. Ireland submitted its report in several parts between 13 January 2003 and 19 August 2003. Luxembourg submitted its report in several parts between 19 November 2002 and 16 September 2003.
3. The European Committee of Social Rights (ECSR) adopted its conclusions regarding these two states during its 202<sup>nd</sup> session (24-28 May 2004).
4. The Governmental Committee of the European Social Charter examined these conclusions during its 108<sup>th</sup> meeting (19-22 October 2004). The list of participants appears in Appendix I.
5. It is recalled that as far as the other states are concerned, the Governmental Committee submitted its abridged report to the Committee of Ministers in January 2004 (CM(2004)33) and that the Deputies adopted Resolution ResChS(2004)2 during its 876<sup>th</sup> meeting.



## II. EXAMINATION OF NATIONAL SITUATIONS AS CONCERNS IRELAND AND LUXEMBOURG ON THE BASIS OF THE ADDENDUM TO CONCLUSIONS XVI-2 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

6. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report.

7. The Committee took note of the cases where the conclusion is deferred because of new questions put by the ECSR as they appear in Appendix III to the present report. It asked governments to reply to the questions in their next reports. It adopted warning(s) and proposal(s) for recommendation(s) which appear in Appendix IV.

8. The Committee proposes to the Committee of Ministers to adopt the following Resolution:

### **Resolution on the implementation of the European Social Charter during the period 1997-2000 (Ireland, Luxembourg), supplementing Resolution ResChs(2004)2 adopted at the 876th meeting of the Ministers' Deputies**

*(Adopted by the Committee of Ministers, on ....  
at the .... meeting of the Ministers' Deputies)*

The Committee of Ministers,<sup>1</sup>

Referring to the European Social Charter, in particular to the provisions of Part IV thereof;

Having regard to Article 29 of the Charter;

Referring to the Resolution ResChs(2004)2 adopted at the 876th meeting of the Ministers' Deputies;

Considering the reports on the European Social Charter submitted by the Governments of Ireland and Luxembourg (concerning period of reference 1997-2000);

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<sup>1</sup> At the 492<sup>nd</sup> meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those States which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia" (entry into force: 30 April 2005), Turkey and the United Kingdom.

Considering the Addendum to Conclusions XVI-2 of the European Committee of Social Rights appointed under Article 25 of the Charter;

Following the proposal made by the Governmental Committee established under Article 27 of the Charter,

Renews the following Recommendation which has not yet been implemented: Ireland - Article 4, paragraph 4;<sup>1</sup>

Recommends that the Governments of Ireland and Luxembourg take account, in an appropriate manner, of all the various observations made in the Addendum to Conclusions XVI-2 of the European Committee of Social Rights and the report of the Governmental Committee.

## **EXAMINATION ARTICLE BY ARTICLE**

### **CASES OF NON-COMPLIANCE**

#### **Article 1§4 – Vocational guidance, training and rehabilitation**

##### **IRELAND**

9. The Irish delegate explained that legislation on the length of residence requirements is currently under review to assess whether it should be amended.

10. The Committee took note of the review and decided to await the next assessment of the ECSR.

#### **Article 2§4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations**

##### **IRELAND**

11. The Irish delegate said that his Government did not agree with the content of Article 2§4 and ECSR's interpretation. He made reference to the basic principles of Irish health and safety system, in particular the duty on all employers to ensure a safe working environment, the use of workplace assessments and the rigorous enforcement by the Labour Inspection. He recalled that ECSR's conclusion would form part of the Government's review of Ireland's problems of non-conformity with the Charter.

12. The representative of the ETUC pointed out that the issue here was not really one of interpretation since the wording of Article 2§4 was quite clear. He emphasised

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<sup>1</sup> Recommendation No. RChS(1995)6 of 22 June 1995.



that the length of working time was a key factor in guaranteeing the health and safety of workers. He also stressed that Article 2§4 even in its new wording in the Revised Charter still made provision for reduced working time or additional paid holidays where necessary. It was therefore essential that the workplace assessments clearly identified dangerous and unhealthy work making it possible to take adequate compensatory measures.

13. The Dutch delegate recalled that Ireland had now ratified the Revised Charter and the Committee could not do more than request the Government to provide for compensatory measures leaving open the precise nature of such measures.

14. The Committee took note of the information provided and asked the Government to introduce compensatory measures in respect of work where it was not possible to eliminate risk entirely.

## **LUXEMBOURG**

15. The Luxembourg delegate said that the situation in his country was roughly comparable to that of Ireland in this respect. In general the law on collective agreements provided for increased pay in dangerous occupations. However, as had been indicated in the report, there was in fact one occupation, mining, where additional paid holidays were provided for. The delegate further stated Luxembourg applied maximum exposure times in certain occupations in accordance with recognised international standards and this might in certain case imply reduced working time to reduce exposure to acceptable levels. More details in this respect would be included in the next report.

16. The Committee took note of the information provided and asked the Government to introduce compensatory measures in respect of work where it was not possible to eliminate risk entirely.

## **Article 3§1 – Issue of safety and health regulations**

### **LUXEMBOURG**

17. The Luxembourg delegate explained that his country had now transposed all the Community directives on occupational health and safety, which included all the risks covered by Article 3§1 of the Charter. In addition, every new establishment now had to take appropriate measures in this area under the legislation on craft and industrial activities. The next report would include a detailed presentation of this information.

18. The Committee took note of the Government's commitment to provide the information requested by the ECSR in its next report and decided to await the next assessment of the ECSR.

## **Article 4§2 – Increased rate of remuneration for overtime work**

## **LUXEMBOURG**

19. The Luxembourg delegate stated that, during the past five years, flexible working time has been introduced in some administrations and will gradually be implemented in the whole civil service. Civil servants may work overtime at a given moment and will be compensated with extra leave at a later stage. In 2003, only 23 civil servants worked overtime. He considered that, in practice, only two categories of civil servants may work overtime: teachers and police officers. In the former case, overtime is not calculated on the basis number of hours actually worked but on their "weight" (coefficient), which is based on the number of pupils or the branch of education. In the latter case, overtime is compensated by a general five-day extra leave applying to all police officers, no matter whether they have actually worked overtime.

20. The Luxemburg delegate also informed the Committee that the Government is considering ways of compensating overtime of members of the Ministry of Foreign Affairs, in view of the extra work load that will be required during the coming semester of EU presidency.

21. The Committee took note of the information provided by the delegate, requested that the situation be brought in conformity with Article 4§2 of the Charter and decided to await the next assessment of the ECSR.

### **Article 4§4 – Reasonable notice of termination of employment**

## **IRELAND**

22. The Irish delegate confirmed the information provided in the report and stated that the situation remains the same. It recalled that the Irish position with regard to Article 4§4 of the Charter is that the periods of notice required by the ECSR are too long given the necessities of the global economy. He informed the Committee that a new bill, if adopted, will extend the scope of the Minimum Notice Act to civil servants who are presently excluded from it.

23. He further stated that the findings of the ECSR under Article 4§4 will be dealt with in the context of a general review of the Irish situation with regard to the ESC but stated that, at this time, he did not know whether there would be any changes in this respect.

24. The representative of the ETUC recalled that this was one of the rare cases where the situation had not been in conformity since Conclusions I and yet the Government did not show any intention to amend it. He suggested that the Committee renew its previous recommendation. He also noted that if the scope of the Minimum Notice Act will be extended to some categories of civil servants periods of notice that have been criticized by the ECSR will cover an even larger number of people.

25. The Cypriot delegate agreed with the ETUC's comments and proposal.

26. The Dutch delegate recalled that a recommendation against Italy was renewed in the same circumstances.

27. This information was confirmed by the Secretariat.

28. The Romanian delegate considered that renewing the recommendation before the adoption of the new bill would be the best way to encourage the Irish Government to take into consideration the conclusion of the ECSR.

29. The Committee decided to renew its recommendation to Ireland by 22 votes in favour, 1 against and 5 abstentions.

**Article 10§1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education**

**IRELAND**

30. See Article 1§4.

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

**IRELAND**

31. See Article 1§4.

**Article 10§4 – Encouragement for the full utilisation of available facilities**

**IRELAND**

32. See Article 1§4.

**LUXEMBOURG**

33. The Luxembourg delegate recognized that the legislation contrary to the Charter is still in force. He added that a bill is pending which provide for financial assistance by schools to persons without means and which set no condition.

34. The Committee took note of the pending bill and decided to await the next assessment of the ECSR.



## **Appendix I**

### **LIST OF PARTICIPANTS**

#### **ALBANIA / ALBANIE**

Mr Arben SIMAKU, Conseiller du Ministre du Travail et des Affaires sociales

Mrs Albana SHTYLLA, Director of the Legal Department, Ministry of Labour and Social Affairs

#### **ARMENIA / ARMENIE**

*Apologised / Excusé*

#### **AUSTRIA / AUTRICHE**

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#### **BELGIUM / BELGIQUE**

Mme Marie-Paule URBAIN, Conseillère, SPF Emploi, Travail et Concertation sociale, Services du Président

M. Laurent BAUDOUX, Conseiller adjoint, SPF Emploi, Travail et Concertation sociale, Services du Président

#### **BULGARIA / BULGARIE**

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#### **CROATIA / CROATIE**

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Ms Lenia SAMUEL, Permanent Secretary, Ministry of Labour and Social Insurance

#### **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Ms Regina HOPLÍCKOVÁ, Officer of the Unit for Integration of Foreigners, Ministry of Labour and Social Affairs

#### **DENMARK / DANEMARK**

Ms Dorte Rievers BINDSLEV, Senior Adviser, Ministry of Social Affairs

#### **ESTONIA / ESTONIE**

Mrs Merle MALVET, Head of Social Security Department, Ministry of Social Affairs

#### **FINLAND / FINLANDE**

Mrs Riitta-Maija JOUTTIMÄKI, Ministerial Adviser (Legal Affairs), Ministry of Social Affairs and Health

Mrs Liisa SAASTAMOINEN, Senior Officer, Legal Affairs, Ministry of Labour

**FRANCE**

Mme Jacqueline MARECHAL, Chargée de mission au Bureau des Relations européennes, Ministère des Affaires sociales, du Travail et de la Solidarité

**GERMANY / ALLEMAGNE**

Ms Iris KROENING, Head of Division, Federal Ministry of Economics and Labour

Mr Holger MAUER, Verwaltungsangestellter, Federal Ministry of Economics and Labour

**GREECE / GRECE**

Ms Panagiota CHONDROU, Official, Ministry of Employment and Social Welfare

Ms Kakara PARASKEYH, Ministry of Employment and Social Welfare

Ms Vasiliki MAKRI, Ministry of Education and Religious Affairs

**HUNGARY / HONGRIE**

Mr László BENCZE, Legal Expert, Ministry of Health, Social and Family Affairs

**ICELAND / ISLANDE**

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*Apologised / excusé*

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**MALTA / MALTE**

Mr Edward GATT, Director General, E.U. and International Affairs, Ministry for the Family and Social Solidarity

**MOLDOVA**

Mrs Ala LIPCIU, Head of Foreign Relations Department, Ministry of Labour and Social Protection

**NETHERLANDS / PAYS-BAS**

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**POLAND / POLOGNE**

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**PORTUGAL**

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Mr Stephen RICHARDS, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills

Ms Sara BRATTAN, ILO, UN & CoE (Employment) Team, Joint International Unit, Dept for Work and Pensions / Dept for Education and Skills

**EUROPEAN TRADE UNION CONFEDERATION /  
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M. Stefan CLAUWAERT, NETLEX Coordinator, Institut syndical européen, Confédération européenne des Syndicats

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UNION DES CONFEDERATIONS DE L'INDUSTRIE ET DES EMPLOYEURS D'EUROPE**

*Apologised / Excusé*

**INTERNATIONAL ORGANISATION OF EMPLOYERS /  
ORGANISATION INTERNATIONALE DES EMPLOYEURS**

*Apologised / Excusé*

**OBSERVERS / OBSERVATEURS**

**ANDORRA / ANDORRE**

*Apologised / Excusé*

**AZERBAIJAN / AZERBAÏDJAN**

*Apologised / Excusé*

**BOSNIA AND HERZEGOVINA / BOSNIE-HERZÉGOVINE**

*Apologised / Excusé*

**GEORGIA / GEORGIE**

Mr Lasha TCHIGLADZE, Head of the Division of Multilateral Treaty, International Law Department, Ministry of Foreign Affairs

**LIECHTENSTEIN**

*Apologised / Excusé*

**MONACO**

M. Rémi MORTIER, Représentant Permanent Adjoint de la Principauté de Monaco auprès du Conseil de l'Europe

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mr Ivan DUBOV, Deputy Director, Department of Legal and International Activities, Federal Service of Labour and Employment, Ministry of Health and Social Development



**SAN MARINO / SAINT-MARIN**

*Apologised / Excusé*

**SWITZERLAND / SUISSE**

*Apologised / Excusé*

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" /  
"L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"**

*Apologised / Excusé*

**UKRAINE**

Mrs Natalija SAPON, Head of International Relations Department, Ministry of Labour and Social Policy



## **Appendix II**

### **LIST OF CASES OF NON-COMPLIANCE**

- Ireland**
- Article 1§4
  - Article 2§4
  - Article 4§4
  - Article 10§1
  - Article 10§3
  - Article 10§4
- Luxembourg**
- Article 2§4
  - Article 3§1
  - Article 4§2
  - Article 10§4



**Appendix III**

**LIST OF DEFERRED CONCLUSIONS BECAUSE OF A QUESTION ASKED FOR THE FIRST TIME OR ADDITIONAL QUESTIONS**

- Ireland**
- Article 2§1
  - Article 2§2
  - Article 2§5
  - Article 3§1
  - Article 3§2
  - Article 4§1
  - Article 4§2
  - Article 4§5
  - Article 10§2
  - Article 15§1

- Luxembourg**
- Article 1§4
  - Article 3§2
  - Article 4§1
  - Article 4§5
  - Article 15§1
  - Article 15§2



## **Appendix IV**

### **WARNING(S) AND RECOMMENDATION(S)**

#### **Warnings**

- **Ireland:** late submission of the report
- **Luxembourg:** late submission of the report

#### **Renewed Recommendation**

##### **Article 4, paragraph 4**

###### **- Ireland**

(Under the 1973 Act and special regulations applying to civil servants, periods of notice for termination of employment are not sufficient)