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

21 January 2013

Case No. 1

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

COMPLAINT

Registered at the Secretariat on 3 January 2013

COLLECTIVE COMPLAINT

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

21st
December
2012

**Fédération des Associations Familiales Catholiques en Europe (FAFCE)
v. Ireland Complaint**

COMPLAINT

Complaint to the European Committee of Social Rights Pursuant to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

Complainant: Fédération des Associations Familiales Catholiques en Europe (FAFCE)

State Party: Ireland

Complaint: That Ireland has failed to satisfactorily apply Article 17 of the Revised European Social Charter.

Summary: The Fédération des Associations Familiales Catholiques en Europe (FAFCE) complains that Ireland has failed to protect child victims of human trafficking by failing to successfully identify those criminally involved in human trafficking, and consequently failing to effectively prosecute those who are guilty of such crimes. The FAFCE submits that these weaknesses of the Irish authorities are in breach of Article 17, and of Part II of the Revised European Social Charter, whereby Ireland has undertaken to take all appropriate and necessary measures designed: to protect young persons against negligence, violence or exploitation.



Admissibility:

Defendant State

Ireland ratified the Revised European Social Charter, including Articles 7 and 17 of Part II, on 4 November 2000, and the Revised European Social Charter entered into force in respect of Ireland on January 1st, 2001. Ireland also ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints on 4 November 2000, and this Protocol entered into force in relation to Ireland on January 1st, 2001. The present Complaint concerns the alleged failure by Ireland to satisfactorily apply articles of the Revised Social Charter by which it has undertaken to be bound, namely Article 17.1b.

The Article Concerned

Article 17: The right of children and young persons to social, legal and economic protection.

Article 17: 1 b of the Revised Charter as follows:

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate measures designed:

(1b) to protect children against negligence, violence or exploitation.

Status of The Fédération des Associations Familiales Catholiques en Europe (FAFCE)

The FAFCE is an international nongovernmental organisation which has consultative status with the Council of Europe. It is included in the list established by the Governmental Committee of international nongovernmental organisations entitled to lodge complaints under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

The Complaint:

The Republic of Ireland is a destination, source and transit country for children subjected to sex trafficking and forced labour. Sex trafficking victims originate in Eastern Europe, Africa, South America and Asia. Labour trafficking victims reportedly consist of children from Bangladesh,

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Pakistan, Egypt, and the Philippines. There may also be some victims from South America, Eastern Europe, Asia and Africa¹.

Forced labour victims are found in domestic service, restaurant, and agricultural work. According to local reporting, including an NGO service provider, some victims have been subjected to domestic servitude by foreign diplomats posted in Ireland. According to local experts, children are subjected to prostitution in various cities in Ireland, including Sligo, Kilkenny, Cork, and Dublin².

During the year 2010, the Irish government funded NGOs that provided specialised assistance to victims of forced labour, forced prostitution and increased implementation of its anti-trafficking law. The government, however, prosecuted and convicted only one person for a human trafficking offense, involving the commercial sexual exploitation of a child. The government identified a number of possible victims of trafficking, but only a few were granted official 'victim status' or provided with temporary residency permits in 2010. There were no prosecutions relating to labour trafficking. This is in contrast to other countries which have had successful prosecutions. There were approximately 7,000 prosecutions in some 20 countries and 3,000 convictions in 2010³.

Definition of Human Trafficking

Human Trafficking is a term increasingly used to define the modern day slave trade⁴. Article 3 (a) of the United Nations (UN) Palermo Trafficking Protocol, which is part of the wider protocol of the Convention Against Transnational Organised Crime (UN TOC) 2000, states that: 'Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others'⁵.

Human Trafficking in Ireland

Legislation and Policy

The Criminal Law (Human Trafficking) Act, 2008 directly criminalises the trafficker in Ireland and officially acknowledges human trafficking as an offence in the Irish state. It was created to deal

¹ U.S.A. State Department –Trafficking in Persons report 2011, published 27/06/2011

² ibid Children and young persons are trafficked for myriad reason, to be discussed later in the subsection 'Children and Young Persons

³ Human Trafficking and Modern day Slavery 2000-2010 [Internet] <http://gvnet.com/humantrafficking/Ireland.htm>

⁴ Anderson & O'Connell Davidson, (2003) Is Trafficking in human Beings Demand Driven? A Multi Country Pilot Study; Kelleher and Associates, (2009) "Globalisation, Sex Trafficking and Prostitution-The Experience of Migrant Women in Ireland

⁵ UN, 2000



specifically with human trafficking in an Irish context and it refers to victims of trafficking for labour exploitation, sexual exploitation, the removal of organs, and to child trafficking and it carries a maximum sentence of 25 years to life, once proven. With the drafting of the National Action Plan to prevent and combat trafficking of human beings in Ireland 2009-2012 (NAP), the government has established a comprehensive framework within which trafficking is defined, and government commitment to stamp out trafficking, is outlined in the 3P Paradigm: protection, prevention and prosecution. To clarify, this signifies the protection of individuals once identified as victims of trafficking, the prevention of human trafficking through awareness raising mechanisms and training for front line government officials, and the prosecution of perpetrators and brothel owners enslave people⁶.

Prosecution

The European Committee of Social Rights' (ECSR) recalling "that the aim and purpose of the Charter being a human rights instrument, is to protect rights not merely theoretically but also in fact" and further stated "that legislation must not only exist, it must be effectively applied and rigorously supervised"⁷. Whilst the Government of Ireland has made some progress in its anti-trafficking law enforcement efforts, only two convicted offenders have ever served time in jail. The government investigated 69 suspected offenders in 2010, an increase from 66 investigated in 2009. Local observers continued to express concern over the lack of use of the 2008 anti-trafficking law to prosecute trafficking offenders in Ireland⁸

Furthermore, the government adopted a broad definition of sexual exploitation under this law, including the sexual abuse of children. Under Ireland's Child Trafficking and Pornography Act 1998, the government has convicted an offender to a prison sentence of ten years for recruiting a child to engage in a sexual act for the purpose of producing child pornography, an offense that constitutes human trafficking. While Anti-Trafficking legislation in Ireland is relatively new (created and implemented in 2008) there is little evidence as to its success in these relatively early stages of implementation. In another case, the government convicted and sentenced an offender to six years' imprisonment under its Child Trafficking and Pornography Act for the attempted recruitment of a child for sexual exploitation. It is suggested that Ireland ought to separate the sexual abuse of children and child pornography clauses from the 2008 statute to ensure trafficking offenses prosecuted under the 2008 law can be tracked under accepted definitions⁹.

While the government reported it convicted other offenders in 2010, these cases centered on the sexual abuse of children that did not include elements of commercial sexual exploitation.

⁶ Anti-Human Trafficking Unit, (2009a) Anti-Human Trafficking Unit (2009a) National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009-2012 [Internet] Dublin, Department of Justice, Equality and Law Reform. Available from <http://www.justice.ie/en/JELR/Final%20National%20Action%20Plan2.pdf>

⁷ Children's rights under the European Social Charter [Internet]

http://www.coe.int/t/dghl/monitoring/socialcharter/Theme%20factsheets/FactsheetChildren_en.pdf

⁸ U.S.A. State Department –Trafficking in Persons report 2011, published 27/06/2011

⁹ ibid

There were no convictions of labour trafficking offenders in Ireland in 2010, concerning either adults or children. The FAFCE argues that the current legislation is of little value, if perpetrators of human trafficking are not brought to justice, and as a direct consequence children and young persons continue to be exploited.

Statistics from An Garda Síochána:

According to The Annual Report of Trafficking in Human Beings, during 2010, 69 cases of alleged trafficking in human beings involving 78 alleged victims were reported to An Garda Síochána. These 78 persons were either encountered directly by An Garda Síochána or were referred by other organisations. Of the 78 (100.0%) persons, 56 (71.8%) were alleged victims of sexual exploitation, 19 (24.4%) were alleged victims of labour exploitation and 3 (3.8%) were alleged victims of an uncategorised exploitation (The An Garda Síochána could not determine which of the two above mentioned forms of trafficking these persons were victims of).

Of the 78 (100.0%) alleged victims of human trafficking reported to An Garda Síochána in 2010, 59 (75.6%) were adults and 19 (24.4%) were minors (under 18 years of age). When divided according to the type of exploitation reported as experienced, of the 56 alleged victims of sexual exploitation, 41 (73.2%) were adults and 15 (26.8%) were minors. Of the 19 alleged victims of labour exploitation, 18 (94.7%) were adults and 1 (5.3%) was a minor. Of the 3 alleged victims of uncategorised exploitation, all 3 (100.0%) were minors.

Of the 69 (100.0%) investigations, 35 (50.7%) were ongoing investigations at the end of reporting period, in 14 (20.3%) investigations either no or insufficient evidence of human trafficking was found, in 7 (10.1%) investigation files were sent to the Director of Public Prosecutions (DPP), 7 (10.1%) investigations involved other outcomes such as the complainant returning home or the investigation being discontinued, 2 (2.9%) investigations resulted in successful convictions. The FAFCE submits that such prosecution levels are too low to effectively protect children and young persons.

The value of increasing prosecution rates

The FAFCE would argue that the higher the prosecution rate, the more likelihood that those who are guilty of trafficking in human beings will be punished. Punishment in this sense refers to “the legal process whereby violators of criminal law are condemned and sanctioned in accordance with specified legal categories and procedures”¹⁰. There are several ways in which the FAFCE maintains that the punishment of such people is beneficial to society, the perpetrator and especially the victims. It is argued that: punishment can stop the defendant from committing further crimes; punishment may discourage others from doing the same; punishment may allow an offender to make amends for the harm that he or she has caused;

¹⁰ Garland 1990: 17 Garland, D. 1990. Punishment and Modern Society. Oxford, England: Oxford University Press.



punishment ensures that people understand that laws are there to be obeyed; that if offenders are incarcerated, society is physically protected from dangerous people; punishment shows the victims that society disapproves of the harm that he or she has suffered; and crucially that punishment may facilitate the re-habilitation of the victim. Protecting children and young persons from initial harm is preferable, but if a child or young person is already the victim of human trafficking, the FAFCE suggests that it is the government of Ireland's responsibility to prevent further harm to those victims. Further harm includes knowing that those responsible for their suffering have gone unpunished.

Victim Identification During 2010, the government identified 78 potential trafficking victims, including 19 children, and six Irish nationals; this is an improvement from 2009, when 66 potential victims were identified. However, given the government's overly broad definition of trafficking, some of these could be cases of sexual abuse rather than trafficking as such. According to NGOs¹¹, the average waiting time for a victim to be officially identified as a potential victim of trafficking is six months. Thus, NGOs take responsibility for providing support to the uncertified victims. In addition, NGO experts continued to assert that many more trafficked children and adults in Ireland remain unidentified and could not benefit from the increased protections put in place for them¹².

While the government formalised procedures to guide officials in the identification and referral of victims, NGOs report that better institutional cooperation among key stakeholders is needed to achieve a reliable identification process to locate other potential trafficking victims in Ireland¹³.

¹¹ Ruhama, www.ruhama.ie; The Immigrant Council of Ireland (ICI), www.immigrantcouncil.ie/; Save the Children, www.savethechildren.ie; UNICEF, www.unicef.ie.

¹² U.S.A. State Department Report (2011)

¹³ Ibid



The government encouraged victims, including children to participate in anti-trafficking investigations and prosecutions and provided a 60-day period of reflection to decide; however, NGOs noted concern that some victims required more time to recover and to escape the influence of their alleged traffickers in order to make a decision about whether to cooperate with law enforcement. The sensitivity of the situation is even more pronounced for children and young people, than for adults. For example, such children are not likely to initially tell the truth, are psychologically in a state of fear, and may have been pressurised not to divulge any information¹⁴.

While trafficking in human beings is described as a form of modern-day slavery, little is known of the victim identification process or, how victims are identified at a national level. Arguably victim identification is crucial as it guarantees the safety of the victims, and removes them from the control of the traffickers, and can lead to prosecution of the offenders. In Ireland, victim identification is carried out solely by the Garda National Immigration Bureau at the request of the Minister for Justice, Equality and Law Reform¹⁵. Patricia Stapleton's study concluded that identification of victims was not being carried out in a timely or consistent manner and that this infringed on the victims' Human Rights, as laid out in international protocol by the Council of Europe (CoE)¹⁶ and lead to reduced prosecution rates of perpetrators.

Failure to Identify Victims

Irish legislation is based upon the United Nations (UN) Palermo Trafficking Protocol (2000) which lays the international framework for the definition of trafficking and adopts a criminal justice approach to the crime, focusing on the issues of prevention, protection and prosecution: prevention of the crime, protection of the victims, and the prosecution of the perpetrators¹⁷. Given the finite nature of the Palermo protocol, and its implementation at national level, criminal prosecutions are notoriously difficult to prove. Firstly, proof of trafficking, i.e. an action, means, and purpose, must all be satisfied for human trafficking to have taken place. To clarify, an *action* denotes recruitment, transportation, harbouring etc, carried out by the *means* i.e. threat, use of force, coercion, abduction etc for the *purpose* of exploitation. This framework has been adopted by the Department of Justice in order to prove trafficking has occurred. Consequently, victim identification is a difficult process. As recommended by the Organisation for Security and Co-Operation in Europe (OSCE) different mechanisms should exist to allow people to recover from their experiences. Victims should be given time to recover and reflect on their experiences, free from the pressure of time to answer questions regarding how they came to be trafficked and what information they may have.

¹⁴ O'Connell, Griffin & Kenna (2008) Thematic Study on Child Trafficking

¹⁵ Human Trafficking in Ireland: Identifying Victims of Trafficking Patricia Stapleton (2011) [Internet]

<http://www.sit.ucc.ie/en/appsoc/research/cstj/CST2ndAnnualConferenceProceedings2011/Section5/Patricia-Stapleton.pdf>

¹⁶ Council of Europe (2005) Convention on Action against Trafficking in Human Beings and its Explanatory Report [internet], http://www.coe.int/t/dg2/trafficking/campaign/source/PDF_Conv_197_Trafficking_E.pdf

¹⁷ Friesendorf, (2009) "Strategies Against Human Trafficking: The Role of the Security Sector" [Internet] Vienna and Geneva. National Defence Academy and

Austrian Ministry for Defence and Sports. Available from

<http://www.dcaf.ch/publications/kms/details.cfm?id=110003&lng=en&nav1=5> ; Kelleher et al., 2009



In Ireland this process is further exacerbated by the vocabulary used in Irish policy documents such as the terms ‘reasonable grounds’ for believing someone is a possible victim; ‘suspected’ or ‘potential’ victims of trafficking, vocabulary which hampers efforts to prosecute the criminals¹⁸.

Under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, as outlined in the arrangements, a child or young person who is identified as a ‘suspected’ victim of human trafficking, and where there are ‘reasonable grounds’ for believing that he or she is a victim of an offence under sections 2 or 4 of the *Criminal Law (Human Trafficking) Act 2008*, cannot be removed from the state¹⁹. However, ‘reasonable grounds’ must be satisfied during victim identification in order to establish that the person has been trafficked. Often the initial stages of the identification process can prove difficult, and while evidence *per se* is not required, substantial knowledge must be obtained in order to satisfy the Superintendent of the Garda National Immigration Bureau (GNIB) that the person is ‘trafficked’. However, in recent months the additional categories of ‘potential’ and ‘suspected’ victim of trafficking are being used when referring to victim identification. In the Anti-Human Trafficking Unit’s *Summary Report of Trafficking in Human Beings in Ireland 2009*²⁰, the term ‘suspected’ victim of trafficking refers to an individual who has satisfied the criteria of trafficked persons, as laid out in the NAP and has therefore been afforded the protection of the state as outlined in the Administrative Immigration Arrangements. This includes the 60-day ‘recovery and reflection’ period. However, the term ‘potential’ victim of trafficking is the term used to describe where, although there may be reasonable grounds to believe the individual may have been trafficked, but where a decision confirming this has yet to be made by the GNIB²¹. The FAFCE argues that the Department of Justice finds it very hard to actually name someone a victim of trafficking, and to grant them ‘victim status’. The Department of Justice are expanding the semantics of human trafficking. Consequently, this is preventing effective identification, prolonging the ordeal for the victims and creating a situation whereby potential victims are reluctant to come forward and identify themselves as ‘trafficked’.

‘Suspected’ victims are often expected to attend many lengthy meetings with Gardaí before satisfying a ‘test of reasonableness’ (ICI, 2010:1). On many occasions victims of trafficking have begun to give detailed witness statements before the period of recovery and reflection has been granted. This, “practice leads to the purpose of recovery and reflection period, as laid out in the COE convention, not being served” (ICI, 2010:2). Therefore, trafficked persons are not being given the opportunity to recover and reflect from their experiences before their involvement in a criminal investigation begins, which paradoxically lowers the effectiveness of the investigation. As stated by the OSCE, “experience shows that co-operation agreements

¹⁸ Human Trafficking in Ireland: Identifying Victims of Trafficking Patricia Stapleton (2011) [Internet]

<http://www.sit.ucc.ie/en/appsoc/research/cstj/CST2ndAnnualConferenceProceedings2011/Section5/Patricia-Stapleton.pdf>

¹⁹ Anti Human Trafficking Unit, 2008:1

²⁰ Anti Human Trafficking Unit, 2009b

²¹ *ibid*, 2009b



between state and non-state actors raise the rate of successful prosecutions of human traffickers” (OSCE, 2004:65).

Children and Young Persons

It is very difficult to say how many children and young people are being trafficked across Ireland, as the issue is problematic to identify, and there is no system in place for recording cases centrally. However, with the U.S. State Department categorising Ireland as a destination, source and transit country for human trafficked children²² and the International Labour Organisation (ILO) stating that 1.2 million children are trafficked every year for labour and sexual exploitation²³, it is submitted that the figure in Ireland, far exceeds the 19 minors identified as ‘suspected’ trafficked persons by the An Garda Síochána in 2010.

Many child victims have already passed through another European country en route to Ireland, and may continue to be trafficked through further countries. Children are trafficked for many reasons: prostitution; pornography; slavery; domestic servitude; the removal of organs; illicit international adoption; forced marriages; for use in begging; and for use in cults²⁴. Child victims of trafficking are aged from 3 years old to 17 years old and include both boys and girls. A number of unaccompanied children in the Cork region have been removed by unauthorised adults from their accommodation and could not be found later. A number of children who have been smuggled into Ireland for so-called humanitarian purposes have in fact been sexually abused by the time they arrive in Ireland. Some child victims are too small or have too little English to explain how they came to be in Ireland; others have been coached or bullied into giving false names and origins. Many trafficked children are separated from their families, with little chance of ever being unified²⁵. Once ‘rescued’, the children’s charity “Barnado’s” suggests that ‘87% of the exploited children we have worked with were involved in drug misuse, 55% were regularly missing from home and 53% were engaged in self harming behaviour such as self-mutilation, overdosing, eating disorders and crime’²⁶. Back in 1998 Barnardo’s issued a press release stating, with regard to the U.K.: ‘Men across the country are selling, controlling and abusing children without fear of prosecution.’²⁷. The FAFCE submits that thirteen years on, this is the current situation in the Republic of Ireland.

The Revised European Social Charter:

Article 17-The right of children and young persons to social, legal and economic protection

²² U.S.A. State Department –Trafficking in Persons report 2011, published 27/06/2011

²³ ILO (2008) [Internet] <http://www.ilo.org/global/statistics-and-databases/lang-en/index.htm>

²⁴ UNICEF (2010) [Internet] http://www.unicef.org/protection/index_exploitation.html

²⁵ Trafficking in Unaccompanied Minors in the European Union Member States – Ireland (2003), by Dr Pauline Conroy

²⁶ Barnados (2010) [Internet] <http://www.barnardos.org.uk/secos.htm>

²⁷ Barnados (1998) [Internet] www.barnardos.org.uk/whose_child_now.pdf



Article 17 (b) of the Revised Social Charter requires State parties to take all appropriate and necessary measures designed;

‘to protect children and young persons against negligence, violence or exploitation’.

The FAFCE submit that the crime of trafficking in human beings, including children and young persons, is by definition exploitation and often results in violence and neglect being suffered. The government of Ireland’s inability to successfully prosecute the perpetrators of these crimes, demonstrates that they have failed to take all appropriate and necessary measures to satisfy Article 17. Whilst it is accepted that the Irish Authorities have implemented measures to prosecute human trafficking crimes, it is argued that these measures are ineffective.



Conclusion

By ratifying the Revised European Social Charter, Ireland's government has shown its commitment to guarantee the protection of children and young persons from negligence, violence and exploitation.

The FAFCE argues that the Irish Authorities have failed to identify children and young persons who are victims of human trafficking. Without such identification, it is impossible to prosecute the perpetrators. It is submitted that Ireland has failed to successfully implement the Criminal Law (Human Trafficking) Act of 2008 and vigorously prosecute, convict, and sentence labour and sex trafficking offenders in Ireland. Prosecution is crucial in protecting such children and young persons from the negligence, violence and exploitation suffered as a result of human trafficking.

The FAFCE asks the European Committee on Social Rights to consider the arguments in this collective complaint and to find that Ireland is in violation of Article 17 of the Revised European Social Charter.



Antoine Renard
President



Lucy Rasmussen
LLb, Msc

Fédération des Associations Familiales Catholiques en Europe