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

13 February 2014

Case Document No. 5

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

**RESPONSE FROM FAFCE
TO THE SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 10 January 2014

COLLECTIVE COMPLAINT

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Fédération des Associations Familiales Catholiques en Europe (FAFCE)

v. Ireland

Complaint no 89/2013

**Response to the Government's submissions
on the merits of the complaint**

10 January 2014

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.

Introduction

1. By letter dated 7 October 2013 the Federation of Catholic Family Associations in Europe (FAFCE) was informed of the submissions of the Agent of the Government of Ireland (Respondent) related to the Collective Complaint referred to above.
2. The FAFCE objects to the claim that this complaint should be declared unfounded on the merits as requested by the Respondent.

The Relevant Articles of the Charter

3. The Respondent claims that “the Complaint has been improperly brought under article 17 rather than article 7(10) of the Charter”. The Respondent suggests that the Complaint should be dismissed *in limine* on the ground of the article used to introduce the Complaint, arguing that “the Committee to date has not entertained any complaint or assessed conformity with the Charter on the subject of child trafficking by reference to Article 17 alone. To do so in determining this Complaint would be a dramatic and unwarrantable enlargement of the jurisprudence in respect of Article 17 – jurisprudence that the Committee has carefully cultivated over many cycles – and would introduce uncertainty as to the true scope of this Article and that of Article 7(10) and the relationship between them.”
4. The FAFCE would wish to underline that it is in the remits of the Committee only to decide on the interpretation and evolution of the jurisprudence, recalling that jurisprudence is by nature dynamic and not static.
5. Child trafficking is not only subject to situations of work. There are a great number of recorded situations of abuse of children that are trafficked such as organ harvesting and sexual abuse. With regard to the latter the provisions of article 17 are vital as the parties commit to “protect children and young persons against negligence, violence or

exploitation”, none of which are explicitly foreseen by article 7(10) that focuses particularly on physical and moral dangers resulting directly or indirectly from the work of children. In the case of organ harvesting and sexual abuse it cannot be argued that the harms caused stem from the children's work, at least not regarding organ harvesting if one takes into consideration article 3 of the Worst Forms of Child Labour Convention¹.

6. On the above grounds the FAFCE requests that the Respondent's position on this point should be dismissed.

Criticism of the Quality and Completeness of the Applicant's Evidence

7. The first point raised by the Respondent concerns the lack of reference to the Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009 to 2012. This report was published in 2013, and it rightly outlines the actions undertaken to combat trafficking in Ireland which have progressed. However, the complaint was registered on 3rd January 2013 and it was hence not possible for the Applicant to take this information into account.
8. The second point brought forward by the Respondent is what it considers as a lack of reference to the administrative framework established to tackle human trafficking. The Applicant did not intend to ignore this framework but has focused on the situation of the victims of trafficking themselves.
9. The analysis of the Respondents Submissions on the aforementioned point brought a question regarding the approach of the victims that are qualified as 'clients' on two

¹ *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (Entry into force: 19 Nov 2000), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312327:NO

occasions (pages 8 and 9 of the Submissions). This expression raised concern as to how the persons who are the victims are considered as the procedure described in the Submissions is not of a commercial character. However, this could be a simple matter of linguistic comprehension on the behalf of the Applicant.

10. The third point addresses the absence of reference to the "Blue Blindfold" website. The Applicant has since studied the website and acknowledges that it is an excellent tool to raise awareness and reach out to victims. Nevertheless it occurs that such a website is difficult for young children to access and use, especially for those who are not yet able to read and/or who do not speak English, which can be the case of trafficked children who are transited through the country.

11. The fourth point concerns the material and data referred to in the Complaint. It is true that more recent data could have been used and was readily available. There was no intention of misleading the Committee: a delay between the drafting of the complaint and the submission occurred due to internal procedural reasons on the Applicant's behalf.

Still, the *Trafficking in Human Persons Report (TIP) 2012*² referred to by the Respondent states that *"The government prohibits all forms of trafficking through its 2008 Criminal Law (Human Trafficking) Act; however, to date no trafficking offenders have been successfully convicted under this law."*

12. The fifth point raised refers to what the Respondent considers as "selective use and deployment of evidence" regarding the Respondent's "ready embrace of treaty obligations to act against human trafficking and its adherence thereto". The Applicant has by no means the intention to mislead the Committee and does not ignore the

² <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>

Respondent's obligations. It is nevertheless the responsibility of the Respondent to provide detailed elements of the implementation of these obligations.

13. The sixth and final point on the quality and completeness of the Applicant's evidence is dismissed by the Applicant on the same grounds as the previous point.

Developments since the Formulation of the Complaint

14. The Applicant notes with satisfaction the increase from 14 to 18 years of the upper age threshold for out-of-court video recording of a complainant's evidence following the enactment on 9 July 2013 of the Criminal Law (Human Trafficking) (Amendment) Act 2013.

The Substantive Complaint: Statistics from An Garda Síochána / The Value of Increasing Prosecution Rates

15. To respond to the Respondent's criticism of outdated information, it is interesting to note that the *Annual Report of Trafficking in Human Beings in Ireland for 2012*³ states the following: *"It is also evident that figures for 2012 show a further reduction in the number of reported cases of human trafficking compared to previous years. An examination of data between 2009 and 2012 reveals that the number of persons from outside of the EU has been declining on a yearly basis."* According to this report "An Garda Síochána initiated 37 investigations relating to allegations of trafficking in human beings involving 48 alleged victims" in 2012. Further, it states: *"Of these, 17 (46%) were ongoing investigations. Eleven (30%) cases involved prosecutions before the Courts. In 4 (11%) cases there was no or insufficient evidence of an offence of human trafficking having occurred in Ireland. In 2 (5%) cases investigations were ceased due to alleged victims not making a statement. In 1 (3%) case the investigation was ongoing into another offence. In 1 (3%) case the investigation file had been sent to the Director of*

³ [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-9EKGZV12474720-en/\\$File/Annual%20Report%202012.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-9EKGZV12474720-en/$File/Annual%20Report%202012.pdf)

Public Prosecution. In 1 (3%) case a conviction was secured under the Child Trafficking and Pornography Act, 1998."

These figures should be viewed in the light of the information provided by the *US TIPS REPORT 2012*⁴: ***"According to an NGO review of the National Action Plan in June 2011, the low number of prosecutions for trafficking contributes to an underestimation of the severity of the trafficking problem in the country."***

The same report points to the absence of successful conviction: *"The government prohibits all forms of trafficking through its 2008 Criminal Law (Human Trafficking) Act; however, to date no trafficking offenders have been successfully convicted under this law."*

The Substantive Complaint: Victim Identification / Failure to Identify Victims

16. The challenge of identifying victims is vast. The Applicant takes note of the efforts provided by the Respondent.

It also notes that the *US TIPS REPORT 2012* underlines that *"The Irish government identified 57 potential victims in 2011, a decrease from 78 victims identified in 2010. The government reported the use of systematic procedures to guide officials in the identification and referral of victims, though NGOs assessed that better institutional cooperation among key stakeholders is needed in order to identify victims and ensure they benefit from assistance programs. (...) While victim cooperation is generally viewed as positive for anti-trafficking efforts, local experts noted concerns about the potentially negative impact on asylum-seeking trafficking victims' ongoing cooperation in lengthy cases without formal recognition or identification by authorities that they are 'suspected' victims, as well as potential threats from traffickers. (...) The government reported that no identified trafficking victims were subjected to deportation from Ireland and there were no cases of trafficking victims being criminalized for unlawful acts committed as a direct result of their being trafficked. Despite this, NGOs continued to*

⁴ See Appendix 1

voice concerns that unidentified victims may have been inadvertently deported or punished for crimes committed while under coercive control of their traffickers.”

The concern expressed by NGOs regarding victims seems to indicate that a considerable number of victims remain unidentified.

The Substantive Complaint: Children & Young Persons

17. According to the Thematic Study on Child Trafficking (2009)⁵ of the Fundamental Rights Agency of the EU referring to the 2008 Bill, *“there has been much criticism of some sections contained therein. In particular, there is not sufficient protection in place for victims of child trafficking who may be seeking asylum and much discretion is afforded to the Minister for Justice, Equality and Law Reform.”*

It also states that *“At present however, it is thought that approximately only 5% of victims of trafficking are being identified at points of entry.”* Although this was in 2009 and many efforts have been made since by the Respondent to identify victims it is still very likely that many of them are never identified having regard to the statistics that remain rather similar from year to year since 2009.

18. Furthermore, unless the Irish law has since evolved it does not make provision for tracing the family of the child or consulting with the parents on the situation of the child. *“The Irish Red Cross handles family tracing with limited resources.”*⁶

19. The Respondent claims that the *“HSE is currently developing an operational plan that (...) aims to increase the range of placement options including increasing the number of foster placements. This has enabled the closure of hostels where children had previously been accommodated in large numbers”*. However, there is no precise indication to whether all hostels have been closed. This does require attention as *“the hostels are not covered by the National Standards for Children’s Residential Centres and its system of*

⁵ http://ec.europa.eu/anti-trafficking/download.action;jsessionid=Gc5cSQQWWjKsvLxJLkq2mLI7mKR879CttFCcLSR2N5Cy01J1gqCg!-388123576?nodePath=/National+Info+Pages/Ireland/5.+RESOURCES/5.3+Reports/5.3.2+Other+reports+and+publications/Child-trafficking-09-Ireland_en.pdf&fileName=Child-trafficking-09-Ireland_en.pdf&fileType=pdf

⁶ *Ibid.* 38

internal and external complaints. The Health Information and Quality Authority (HIQA) and its Social Services Inspectorate (SSI) are responsible for inspecting accommodation facilities where children are placed. NGOs have reported that nearly all hostels failed the inspection, but no inspection report has so far been made public.⁷

Conclusion

20. The Complainant invites the Committee to consider the above Response and maintains its opinion that Ireland has failed to identify children and young people who are victims of human trafficking.

⁷ Thomas Hammarberg, Report by the Commissioner for Human Rights on his Visit to Ireland (Council of Europe, 30th April 2008). Available at http://www.coe.int/t/commissioner/WCD/visitreports_en.asp# (visited 25th June 2008)