

EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX



**REPORT ON THE MEETING WITH  
THE IRISH GOVERNMENT ON PROVISIONS  
OF THE REVISED SOCIAL CHARTER  
NOT ACCEPTED BY IRELAND**

Dublin, 4 October 2005

6 December 2005



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For each of the 4 provisions not accepted:

- European Committee of Social Rights Case-law
- Situation in Ireland

## Introduction

### Situation of Ireland in relation to the Revised Charter 1<sup>st</sup> December 2005

#### Ratifications

Ireland ratified the Revised European Social Charter on 2000 and has accepted 93 of the Revised Charter's 98 paragraphs.

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 <sup>1</sup>	27.2	27.3	28	29	30	31.1	
31.2	31.3								= Non-Accepted provisions			

#### Reports

Ireland submitted ... reports on the 1961 Charter and has submitted one report on the Revised Charter.

Deadline for submission of the 2<sup>nd</sup> report on the non hard core provisions of the Revised Charter was 30 June 2004, Ireland submitted parts of its report in May 2005, but too late for it to be examined.

Deadline for the submission of the 3<sup>rd</sup> report on the hard core provisions of the Revised Charter: 30.06.05. A report on one provision (Article 12) was received on 15 November 2005. To date no report on other provisions has been received.

Deadline for the submission of the 4<sup>th</sup> report on part of the non-hard core provisions of the Revised Charter before 30.03.06

#### Collective Complaints

Ireland has agreed to be bound by the "collective complaints" procedure. It has not yet made a declaration enabling national NGOs to submit collective complaints. One complaint has been submitted to the European Committee of Social Rights:

- World Organisation Against Torture v. Ireland (Collective complaint No. 18/2003):  
Article 17

<sup>1</sup> Ireland has not accepted Article 27§1 part c.

## **Context of the meeting**

The meeting in Dublin was the fifth such meeting under the new procedure examination of non-accepted provisions – Article 22 of the 1961 Social Charter – agreed by the Committee of Ministers in December 2002<sup>2</sup>.

The Deputies had 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 non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. 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.

In the case of Ireland the European Committee of Social Rights had agreed with the Irish authorities that it would meet representatives of various ministries in Dublin on 4 October 2005.

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<sup>2</sup> Committee of Ministers decision of 11 December 2002.

## **Composition of the delegation and Government representation**

The Council of Europe delegation comprised of the following:

- Mr Gerard QUINN, first Vice President of the European Committee of Social Rights,
- Mr Stein EVJU, General rapporteur,
- Mrs Polona KONCAR,
- Mr Régis BRILLAT, Executive Secretary of the European Social Charter, and
- Ms Niamh CASEY, administrator.

They met representatives of the following relevant Ministries and Agencies:

- Department of Enterprise Trade and Employment
- Department of the Environment and Local Government
- Department of Justice, Equality, and Law Reform
- Department of Foreign Affairs

The meeting was organised by Mr John McDONNELL, International Officer, Employment Rights' Section, Department of Enterprise, Trade and Employment and the Irish delegate to the Governmental Committee of the European Social Charter.

## **Programme of the meeting**

### **4 October 2005 – Meeting on provisions not accepted**

Meeting with officials from relevant Irish Ministries on provisions of the Revised Social Charter not accepted by Ireland.

#### **Introductory speeches**

Mr. J. McDonald  
Mr. R. Brillat

#### **Exchange of views on non-accepted provisions**

- Article 8§3 – Time off for nursing mothers  
Presentation by Mrs. P. Koncar
  
- Article 21 – Right of workers to information and consultation  
Presentation by Mr. S. Evju
  
- Article 27§1c – Right of workers with family responsibilities to equal opportunities and treatment – child day care services and other child care arrangements  
Presentation by Mrs. P. Koncar
  
- Article 31 – Right to housing  
Presentation by Mr. G. Quinn

**Informal meeting with officials from relevant Irish Ministries** on issues relating to the implementation of Article 5 (right to organize) and Article 6 (right to bargain collectively) of the Revised Social Charter in Ireland.

## **Executive summary**

The first part consisted of a meeting with members of the relevant ministries concerned with the European Social Charter. Presentations were made by members of the delegation on the provisions which have not been accepted by Ireland and a representative of the Ministry concerned gave an explanation of the national situation with regard to the provisions in question of the revised Charter.

A survey of the ECSR case-law, as well as additional comments are appended.

The delegation concluded that there were certain provisions of the Revised Charter that Ireland could accept immediately (see below) and other provisions which could not be accepted at the present time but should be kept under review.

### **Provisions which could be accepted immediately by Ireland**

Article 8§3 - Time off for nursing mothers

Article 27 1c - Child care facilities for workers with family responsibilities

### **Provisions which would not be accepted Ireland but kept under review**

Article 21 –Right to information and consultation

Article 31 – Right to housing

## APPENDIX I

### SURVEY PROVISION BY PROVISION

The Appendix has been drafted on the basis of the European Committee of Social Rights Case-Law Digest, May 2005 (document prepared by the Secretariat), It also takes into account the information provided by the Irish government during the meeting.

#### ■ Article 8§3- Time off for nursing mothers

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

#### ECSR Case-law presented by Mrs P. Koncar

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who ~~breastfeed~~ their babies shall be granted time off for that purpose.

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Time off for nursing must be treated as normal working time and remunerated as such.

Each situation is assessed on a case-by-case basis. In principle, time off must be granted during working hours, however provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance. By way of illustration, the following examples are considered to be in conformity with this provision: legislation providing for two daily breaks for one year for breastfeeding; half-hour breaks where the employer provides a nursery or room for breastfeeding; one-hour daily breaks for breastfeeding children up to the age of one.

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### **The situation in Ireland**

New legislation on Maternity Protection in Employment - Maternity Protection (Amendment) Act 2004 and subsequent regulations provide for time off from work or reduction of working hours for breastfeeding without loss of pay.

The legislation provides for time off from work or reduction of working hours until the baby is six months old.

### **Conclusion**

This provision could be accepted by Ireland as it now has legislation providing for feeding breaks, however there might be an issue over the length for which such breaks are granted as, under the ECSR case law breaks should be granted until a baby reached the age of nine months. However each national situation is assessed on a case by case basis.

■ **Article 27 1 c -**

All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities

1. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to take appropriate measures:

c to develop or promote services, public or private, in particular child day care services and other childcare arrangements;

*Appendix : It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating on or advancing in economic activity. The terms "dependent children » and « other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.*

**ECSR Case-law presented by Mrs P. Koncar**

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities. Where a State has accepted Article 16, childcare arrangements are dealt with under that provision. In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.

**The situation in Ireland**

Ireland has recently developed childcare facilities and continues to do so. The number of childcare places continues to increase. Ireland has accepted Article 16 of the revised Charter.

**Conclusion**

This provision could be accepted by Ireland.

## ■ Article 21-the right of workers to information and consultation

Workers have the right to be informed and to be consulted within the undertaking.

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

*Appendix (Articles 21 and 22): 1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.*

*2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.*

*3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy.*

*4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.*

*5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.*

*6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.*

### ECSR Case-law presented by Mr S. Evju

Workers and/or their representatives (trade unions, worker’s delegates, health and safety representatives, works councils) must be informed on all matters relevant to their working environment except where the conduct of the business requires that some confidential information not be disclosed.

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Furthermore, they must be consulted in good time with respect to proposed decisions that could substantially affect the workers’ interests, in particular those which may have an impact on their employment status.

This provision applies to all undertakings of the private sector, including those managed by public authorities. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

These rights must be effectively guaranteed. In particular, workers must have legal remedies when they are not respected. There must also be sanctions for employers who fail to fulfil their obligations under this Article.

### **The situation in Ireland**

Ireland is currently transposing Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework on information and consultation of workers in the European Community. Once this legislation has been adopted by the Irish Parliament the situation will be clearer.

Discussions focused on the definition of an “undertaking” differences in this respect between the definition in the Directive and Article 21 of the Charter, definition of information and consultation, meaning of “economic and financial situation”, whether individual and informal consultation would be sufficient under Article 21 and more broadly whether Article 21 of the Charter goes beyond the requirements of the EU Directive.

### **Conclusion**

This Article could not at present be accepted. The situation should be reviewed once the new legislation has been adopted.

## ■ Article 31 (Right to housing)

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed

1. to promote access to housing of an adequate standard.
2. to prevent and reduce homelessness with a view to its gradual elimination.
3. to make the price of housing accessible to those without adequate resources.

### ECSR Case-law presented by Mr. G. QUINN

General observations: the supply of housing is regulated by market transactions across Europe, Article 31 does not try to alter this; simply concerned with a floor to the market.

Article 31 in general prescribes obligations as to conduct rather than results.

#### *Article 31§1*

States must guarantee the right to adequate housing.

The notion of adequate housing must be defined in law. Adequate housing means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law.

#### The criteria for adequate housing are:

- a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and if specific dangers such as the presence of lead or asbestos are under control.
- over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.
- security of tenure means protection from forced eviction and other threats (dealt with under paragraph 2 of Article 31).

The standards for adequate housing should be applied not only to new constructions, but also gradually, in the case of renovation, to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners. The situation in practice is also assessed.

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also

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guard against the interruption of essential services such as water, electricity and telephone.

The effectiveness of the right to adequate housing implies its legal protection. Adequate procedural safeguards are required. Tenants or occupiers must have access to affordable and impartial judicial remedies.

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Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

*Article 31§2*

Homeless persons are those individuals who do not have at their disposal a legal dwelling or other form of adequate shelter.

With regard to the reduction of homelessness, states must take measures to assist persons who are without a home or shelter and take preventive measures.

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¶ Homeless are those individuals not legally having at their disposal a dwelling or another form of adequate shelter.

States must gradually reduce homelessness, towards its elimination. Reducing homelessness implies the introduction of emergency and longer-term measures, such as the provision of immediate shelter and care for the homeless as well as measures to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness. The temporary supply of shelter, however adequate, cannot be considered satisfactory in the long term. Individuals considered as being homeless should be provided with adequate housing within a reasonable period.

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States must also take action to prevent categories of vulnerable people from becoming homeless. To this purpose they must implement a housing policy for all disadvantaged groups of people to ensure access to social housing or provide housing benefits (access to social housing is primarily examined under Article 31§3).

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States must establish procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.

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Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties effected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions from being carried out at night or during the winter period, provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Procedural safeguards are of great importance. Compensation for illegal

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evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Equal treatment with respect to housing must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

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*Article 31§3*

An adequate supply of affordable housing must be ensured.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis, while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.

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It is incumbent on states to:

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In order to increase the supply of affordable housing,

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- adopt appropriate measures for the construction of housing, in particular social housing;  
ensure access to social housing or subsidized housing for all disadvantaged groups of people. Measures to reduce waiting times which are very long must be adopted. Legal remedies must be available in the event of excessive waiting times.
- introduce housing benefits (or similar benefits) for low-income and disadvantaged sections of the population. Housing allowance must be an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

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Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

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**The situation in Ireland**

Ireland has embarked upon a substantial housing programme, involving for example the construction of housing (70, 000 new homes were constructed during 2005), the adoption of legislation increasing regulation in the rental sector, and the regeneration of the housing stock.

There exists legislation dealing with those who have specific housing needs e.g. the homeless, travelers, not a “rights based approach but a needs based approach”.

“Social housing” often takes the form of financial assistance in the private market for those unable to cover the cost of housing, “affordable” housing goals form part of the Social Partnership.

There are at present a sufficient number of places in emergency accomation for persons who are homeless. Strategies for dealing with homeless persons have been put in place, linking housing with other care issues.

Although Ireland has adopted wide ranging housing programmes there is a reluctance to accept Article 31, as there is a perception that Article 31 would require the provision of an individual right to housing enforceable by the courts. It has difficulties with the concept of a right to housing per se.

## **Conclusion**

Ireland was not prepared to accept at this time Article 31.