



European
Social
Charter

Charte
sociale
européenne



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

07 September 7, 2021

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

IRELAND

TABLE OF CONTENTS

I. SUMMARY.....	3
II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS.....	4
Appendix I: The situation of Ireland with respect to the European Social Charter.....	8
Appendix II: Declaration of the Committee of Ministers on the 50th Anniversary of the European Social Charter.....	9

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, 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 from the point of view of the degree of conformity of the situation with non-accepted provisions. This review is 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 States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon and not a rule.

Ireland ratified the Charter on 4 November 2000, accepting 92 of 98 provisions of the revised Charter. It has not yet accepted provisions 8.3; 21; 27§1c; 31§§ 1,2,3. 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.

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 and for the third time in 2015, the Irish authorities were invited to provide written information on the non-accepted provisions. However, no information was submitted to the European Committee of Social Rights.

In 2020, with a view to conducting the procedure for the fourth time, the European Committee of Social Rights invited the Irish authorities to provide written information on the situation related to the non-accepted provisions of the Charter.

After examining the written information provided by the Government of Ireland in 2020, the European Committee of Social Rights considered that there were no major obstacles to the acceptance by Ireland of the following provisions of the Charter: Articles 8§3, 27§1c and 31.

Regarding Article 21, the information provided was not detailed enough to assess the current situation. However, as the Irish authorities consider that the situation is in line with the requirements of this provision, the Committee invites Ireland to accept Article 21 of the Charter.

Since Ireland is bound by the collective complaints procedure, the Committee also wishes to invite the Irish authorities to consider making the declaration provided for in Article 2 of the 1995 Additional Protocol in order to allow national non-governmental organisations to submit such complaints.

The next examination of the provisions not accepted by Ireland will take place in 2025.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

Art. 8§3 The right of employed women to protection: Time off for nursing mothers

Situation in Ireland

Section 9 of the Maternity Protection (Amendment) Act 2004, which came into force on 18 October 2004, provides that a breastfeeding employee who has informed her employer is entitled, without loss of pay for the purpose of breastfeeding, to reduced working hours or breastfeeding breaks, where breastfeeding facilities are provided in the workplace. The Maternity Protection Regulations 2004 (SI No 654 of 2004) set out the arrangements for breastfeeding breaks.

In addition, the First Five Whole of Government Strategy for Babies, Young Children and their Families contains a commitment to extend the current provisions in the 2004 Act from 26 weeks to 104 weeks after the baby's birth, in keeping with the WHO recommendation to continue breastfeeding until children are two years old.

Ireland will review its position on Article 8§3 with a view to moving towards acceptance of this provision.

Opinion of the Committee

The Committee recalls that according to Article 8§3, all employed mothers (including domestic employees¹ and women working at home) who breastfeed their babies shall be granted time off for this purpose.

Time off for nursing should in principle be granted during working hours; it should be treated as normal working time and remunerated as such². However, provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance³.

Time off for nursing must be granted at least until the child reaches the age of nine months⁴.

The practical ways of implementing this Article are appreciated on a case-by-case basis: legislation providing for two daily breaks for a period of one year for breastfeeding, two half-hour breaks where the employer provides a nursery or room for breastfeeding⁵, one hour daily breaks⁶ and entitlement to begin or leave work earlier have all been found to be in conformity with the Charter⁷.

In the light of the information provided on the current legal situation and practice in Ireland, the Committee reiterates its opinion that there are no major obstacles for Ireland to accept Article 8§3 of the Charter and, consequently, it invites the Irish authorities to accept this provision without delay.

Article 21 – The right to information and consultation

Situation in Ireland

A range of legislation has been enacted in Ireland which provides additional clarity on the provision of information and consultation for workers. This includes:

The Employees (Provision of Information and Consultation) Act 2006 (Number 9 of 2006),
The Transnational Information and Consultation of Employees Act 1996 (No. 20 of 1996),

¹ Conclusions XVII-2 (2005), Spain

² Conclusions XIII-4 (1996), Netherlands

³ Conclusions 2005, Sweden

⁴ Conclusions 2005, Cyprus

⁵ Conclusions I (1969), Italy

⁶ Conclusion I (1969), Germany

⁷ Conclusions 2005, France

The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006),
The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007),
European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008),
Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (No. 27/2007),
Regulation 8 of European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, Statutory Instrument Number 131 of 2003.

Ireland will review its position on Article 21 with a view to moving towards acceptance of this provision.

Opinion of the Committee

The Committee recalls that Article 21 applies to all undertakings, whether private or public. States Parties 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. However it is not applicable to public servants^{8 9}.

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 environment¹⁰, except where the conduct of the business requires that some confidential information not be disclosed.

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.

These rights must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected¹¹. There must also be sanctions for employers which fail to fulfil their obligations under Article 21¹².

The Committee notes the legislative measures taken to ensure the effective exercise of the right of workers to be informed and consulted within the undertaking in Ireland. However, the Committee considers that the information provided by the Irish authorities is not sufficiently detailed to enable it to form a firm opinion as to whether the situation complies with the requirements of Article 21 of the Charter.

Article 27§1c – The right of workers with family responsibilities to equal opportunities and equal treatment : Participation in working life

Situation in Ireland

The national approach in terms of policy and funding for high quality, accessible and affordable early learning and care and school-age childcare has evolved over the past two decades, since Ireland ratified the Revised Social Charter. Substantial progress has been made towards increasing access to affordable and quality early learning and care and school-age childcare and this progress has recently been acknowledged by the European Commission through the EU Semester Process.

Between 2000 and 2011, the Equal Opportunity Childcare Programme and the National Childcare Investment Plan prioritised building the national infrastructure for early learning and care and

⁸ Conclusions XIII-3 (1995), Finland

⁹ European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 40/2007, decision on the merits of 23 September 2008, § 42

¹⁰ Conclusions 2010, Belgium

¹¹ Conclusions 2003, Romania

¹² Conclusions 2005, Lithuania

school-age childcare, supporting disadvantaged families and supporting parental access to employment and training, in particular for women. The establishment of the Department of Children and Youth Affairs in 2011 demonstrated a commitment and recognition of children themselves, and early education, as a Government priority.

More recently, policies and strategies have placed importance on the benefits of early learning and childcare for all children, and in particular for children with additional needs and those who are disadvantaged. These include the Universal Pre-School Early Childhood Care and Education (ECCE) programme (and Access and Inclusion Model), the National Childcare Scheme and the First 5 Strategy.

Ireland will review its position on Article 27§1c with a view to moving towards acceptance of this provision.

Opinion of the Committee

The Committee recalls that 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 responsibilities¹³.

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 child¹⁴.

Given the information provided on the current legal situation and practice in Ireland, the Committee reiterates its opinion that there are no major obstacles for Ireland to accept Article 27§1c of the Charter and, consequently, it invites the Irish authorities to accept this provision without delay.

Article 31 – The right to housing

Situation in Ireland

Article 31 of the Charter could not be accepted because of existing provisions in the Irish Constitution which have not changed since the ratification of the Charter.

However, many substantive rights regarding housing already arise from legislation, including the right to be assessed for social housing support and, if qualified, placed on a waiting list for a social house or to avail of housing assistance payment and be placed on a transfer list.

The State provides social housing through its Rebuilding Ireland programme and its various housing policies and schemes support those who need help in securing housing for themselves and their families.

In 2020, the largest ever budget for housing was put in place, with an additional 50,000 social homes to be provided over the following five years. The 2021 budget provides a record level of funding for housing and includes an additional €500 million for additional social housing construction, as well as increased funding for homelessness programmes and private sector renting.

The issue of accepting Article 31 will be re-examined if and when the constitutional position changes.

¹³ Conclusions 2005, Statement of Interpretation on Article 27§1c; see for example Estonia

¹⁴ Conclusions 2005, Italy

Opinion of the Committee

Article 31 imposes to State positive obligations¹⁵. The State must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. It has a margin of discretion in determining the steps to be taken to ensure compliance with the Charter.

Article 31 cannot be interpreted as imposing on States Parties an obligation of “results”. However, the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form. This implies that, for the situation to be in conformity, States Party must¹⁶:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b) maintain meaningful statistics on needs, resources and results;
- c) undertake regular reviews of the impact of the strategies adopted;
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

As regards the means of ensuring steady progress towards achieving the goals laid down by the Charter, the implementation of the Charter requires State Parties not merely to take legal action, but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein¹⁷.

The Committee considers that the legislative and practical measures, including funding, taken by the Irish authorities to ensure the right to housing open the possibility for Ireland to accept Article 31 of the Charter. It therefore encourages the Irish authorities to consider accepting this provision in the near future.

¹⁵ European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §35

¹⁶ International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

¹⁷ International Movement ATD Fourth World (ATD) v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §61

APPENDIX I

— 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](#).

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.