

– Ireland and the European Social Charter –

Ratifications

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.

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.

Charter in domestic law

Ireland is a dualist state.

Reports

Between 1966 and 2014, Ireland submitted 21 reports on the application of the Charter and 10 reports on the application of the Revised Charter.

The [10th report](#) which was submitted on 20 November 2012, concerns the accepted provisions relating to Thematic Group 2 "Health Social security and Social protection i.e.: Article 3, 11, 12, 13, 14, 23 and 30). Conclusions in respect of these provisions were published in January 2014.

The 11th report which was to be submitted 31 October 2013 should have concerned the accepted provisions relating to Thematic Group 3:

- The right to just conditions of work (Article 2),
- The right to a fair remuneration (Article 4),
- The right to organise (Article 5),
- The right to bargain collectively (Article 6),
- The right to information and consultation (Article 21),
- The right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- The right to dignity at work (Article 26).
- The right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- The right to information and consultation in collective redundancy procedures (Article 29)

Conclusions in respect of these provisions will be adopted in December 2014.

* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Ireland with respect to the application of the Revised Charter

Examples of progress achieved in the implementation of social rights under the Social Charter¹

Employment

- ▶ Introduction of a statutory minimum wage (2000 Act on the National Minimum Wage).
- ▶ Repeal of section 9 of the 1939 Offences Against the State Act, which allows the prosecution of public service officials and employees for taking strike action.

Health/Education

- ▶ The Protection of Young Persons (Employment) Act, 1996 sets out a broader definition of a child for the purpose of employment by including all persons under the age of 16 years or, if higher, still subject to compulsory education. The limits on working time for children aged 14 and 15 are set at 7 hours per day and 35 hours per week.

Non-discrimination (Employment)

- ▶ Employment Equality Act 2004 strengthens protection against discrimination in employment.

Non-discrimination (Birth)

- ▶ Elimination of discrimination against children born out of wedlock in respect of custody, and the right of ownership and succession (1987 Status of Children Act).

Non-discrimination (Disability)

- ▶ Equal Status Act 2000 and the Disability Act 2005 together provide a general legal framework on social integration of persons with disabilities and their judicial protection in case of discrimination.

Movement of persons

- ▶ The power of the Minister of the Interior to issue expulsion orders has been restricted in that he must take account of the age, family status, employment prospects and length of stay of the person concerned (1999 Immigration Act).

Cases of non-compliance

Thematic group 1 "Employment, training and equal opportunities"

- ▶ *Article 1§2 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

- the upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- army officers can not seek early termination of their commission unless they repay to the state at least part of the cost of their education and training, and the decision to grant early retirement is left to the discretion of the Minister of Defence, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

[\(Conclusions 2012\)](#)

- ▶ *Article 1§4 - Right to work - Vocational guidance, training and rehabilitation (Article 9 and Article 10§§1 and 3)*

- access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed
- there is indirect discrimination of nationals of other States Parties residing or working lawfully in the country due to the length of residence condition for access to continuing vocational training.

[\(Conclusions 2012\)](#)

¹ « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

► *Article 9- Right to vocational guidance*

Access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed

[\(Conclusions 2012\)](#)

► *Article 10§1 Promotion of technical and vocational training; access to higher technical and university education*

Indirect discrimination of nationals of other states party due to the length of residence requirements

[\(Conclusions 2012\)](#)

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

Indirect discrimination of nationals of other states party residing or working lawfully in the country due to the length of residence condition for access to continuing education

[\(Conclusions 2012\)](#)

► *Article 10§5 – Right to vocational training - Full use of facilities available*

Equal treatment for nationals of other States Parties is not guaranteed with respect to fees and financial assistance for training.

[\(Conclusions 2012\)](#)

► *Article 18§2 - Right to engage in a gainful occupation in the territory of other States Parties - Simplifying existing formalities and reducing dues and taxes*

The fees for work permits are excessive.

[\(Conclusions 2012\)](#)

► *Article 24- Right to protection in case of dismissal*

Legislation permits the exclusion of employees from protection against dismissal for one year during the probationary period and employees having reached the normal retiring age are excluded from the protection of the Unfair Dismissals legislation which goes beyond what is permitted by the Appendix to the Charter.

[\(Conclusions 2012\)](#)

Thematic group 2: "Health, social security and social protection"

► *Article 354 Right to safe and healthy working conditions - Occupational health services*

It has not been established that the public authorities promote the progressive institution of occupational health services.

[\(Conclusions 2013\)](#)

► *Article 11§3- Prevention of diseases and accidents - Right to protection of health*

- it has not been established that adequate measures are in place to prevent the risks arising from asbestos

- it has not been established that adequate measures are in place to prevent and reduce accidents.

[\(Conclusions 2013\)](#)

► *Article 12§1 – Right to social security - Existence of a social security system*

- Minimum levels of sickness, unemployment, survivor's, employment injury and invalidity benefits are inadequate.

[\(Conclusions 2013\)](#)

► *Article 12§4 - Right to social security - Social security of persons moving between states*

The right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

[\(Conclusions 2013\)](#)

► *Article 13§1 - Right to social and medical assistance - Adequate assistance for every person in need*

It is not established that foreign nationals without resources, legally residing in Ireland, have adequate access to

healthcare.

[\(Conclusions 2013\)](#)

► *Article 13§4 - Right to social and medical assistance- Specific emergency assistance for non-residents*

It does not find it established that all foreign nationals, legally or irregularly present in Ireland, have adequate access to emergency medical assistance.

[\(Conclusions 2013\)](#)

► *Article 14§1- Right to benefit from social services - Promotion or provision of social services*

it has not been established that there is an effective and equal access to social welfare services and the quality of social welfare services meets users' needs.

[\(Conclusions 2013\)](#)

► *Article 14§2- Right to benefit from social services - Public participation in the establishment and maintenance of social services*

It has not been established that the quality of social services delivered by non state providers meets users' needs.

[\(Conclusions 2013\)](#)

Thematic group 3: "Labour rights"

► *Article 2§1 – Right to just conditions of work - Reasonable working time*

Legislation on working hours permits a 72 hour working week in the merchant shipping sector.

[\(Conclusions 2007\)](#)

► *Article 4§1 - Right to a fair remuneration - Decent remuneration*

The minimum wage falls below 60% of the average wage and information on net average wage is not provided.

[\(Conclusions 2007\)](#)

► *Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment*

1. The minimum statutory notice periods provided for in law (ranging from 1 to 8 weeks) are not adequate².
2. Established civil servants do not receive a notice period but instead a 14-day period during which the person concerned may make representations against a proposed dismissal.

[\(Conclusions 2007\)](#)

► *Article 4§5 – Right to a fair remuneration - Limits to deduction from wages*

Workers may waive their right to limited deductions from wages; and deductions from wages may deprive workers of their very means of subsistence.

[\(Conclusions 2007\)](#)

► *Article 5 – Right to organise*

1. Certain closed shop practices are permitted in law;
2. National law does not fully protect workers against dismissal on the ground of trade union membership or activities.

[\(Conclusions 2006\)](#)

► *Article 6§4 – Right to bargain collectively*

Only authorised trade unions (i.e. those holding a negotiation licence) and their members are afforded immunity against civil action in the event of a strike and, under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in strike action.¹

[\(Conclusions 2006\)](#)

Thematic group 4: "Children, families and migrants"

² RecChS(1995)6 adopted by the Committee of Ministers on 22 June 1995

► *Article 7§1 – Right of children and young persons to protection - Prohibition of employment under the age of 15*

Children employed by a close relative are not afforded the protection required by this provision of the Revised Charter.

([Conclusions 2011](#))

► *Article 7§3 – Right of children and young persons to protection - Prohibition of employment of children subject to compulsory schooling*

The mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they may benefit from such education and children employed by a close relative are not afforded the protection required.³

([Conclusions 2011](#))

► *Article 7§4 - Right of children and young persons to protection - Working time*

The Committee is unable to assess whether the working hours of the great majority of persons under 18 are limited in accordance with the needs of their development

([Conclusions 2011](#))

► *Article 7§5 – Right of children and young persons to protection - Fair pay*

1. The minimum net wage is manifestly inadequate;
2. The rate paid to young workers between 16 and 18 years is too low; and
3. Young persons working for close relatives are not covered by the Minimum Wage Act.

([Conclusions 2011](#))

► *Article 7§8- Right of children and young persons to protection - Prohibition of night work*

The Committee is unable to assess whether children employed by a close relative are prohibited from performing night work.

([Conclusions 2011](#))

► *Article 8§1 – Right of employed women to protection of maternity - Maternity leave*

The amount of maternity benefit is manifestly too low

([Conclusions 2011](#))

► *Article 8§2 – Right of employed women to protection of maternity - Illegality of dismissal*

1. It has not been established that there is adequate protection against unlawful dismissals during pregnancy or maternity leave;
2. It has not been established that reinstatement or adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

([Conclusions 2011](#))

► *Article 17§1 - Right of children and young persons to social, legal and economic protection – Assistance, education and training*

1. Young prisoners are not always separated from adults;
2. The age of criminal responsibility is too low for some offences;
3. Corporal punishment of children is not explicitly prohibited in the home

([Conclusions 2011](#))

► *Article 19§6 - Right of migrant workers and their families to protection and assistance- Family reunion*

It has not been established that migrant workers receiving social benefits are not precluded from the right of family reunion.

([Conclusions 2011](#))

► *Article 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation; - Equal treatment for the self-employed*

Migrant workers have no right of appeal against a deportation order.

³ RecChS(2001)2 adopted by the Committee of Ministers on 7 February 2001.

[\(Conclusions 2011\)](#)

▶ *Article 19§12 – Right of migrant workers and their families to protection and assistance - Teaching mother tongue of migrant*

It has not been established that Ireland promotes and facilitates the teaching of the migrant worker's mother tongue to the children of migrant workers.

[\(Conclusions 2011\)](#)

▶ *Article 27§1 - Right of workers with family responsibilities to equal opportunity and treatment - Participation in working life*

Periods of parental leave are not taken into account in the calculation of pension

[\(Conclusions 2011\)](#)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Irish Government to provide more information in the next report in respect of the following provisions:

Thematic group 1 "Employment, training and equal opportunities"

(Report to be submitted by 31/10/2015)

- ▶ Article 1§1- Conclusions 2012
- ▶ Article 1§3- Conclusions 2012
- ▶ Article 15§3 – Conclusions 2012
- ▶ Article 18§1 – Conclusions 2012
- ▶ Article 18§3 – Conclusions 2012
- ▶ Article 25 – Conclusions 2012

Thematic group 2 "Health, social security and social protection"

(Report to be submitted by 31/10/2016)

- ▶ Article 3§1 –Conclusions 2013
- ▶ Article 3§2- Conclusions 2013
- ▶ Article 3§3- Conclusions 2013
- ▶ Article 11§1- Conclusions 2013
- ▶ Article 11§2- Conclusions 2013
- ▶ Article 12§3- Conclusions 2013
- ▶ Article 23- Conclusions 2013

Thematic group 3: "Labour rights"

(Report to be submitted by 31/10/2013)

- ▶ Article 2§4 – Conclusions 2007
- ▶ Article 4§2 – Conclusions 2007
- ▶ Article 6§2 – Conclusions 2006
- ▶ Article 29 – Conclusions 2007

Thematic group 4: "Children, families and migrants"

(Report to be submitted by 31/10/2014)

- ▶ Article 7§§2 and 7 – Conclusions 2011
- ▶ Article 17§2 – Conclusions 2011
- ▶ Article 19§4 – Conclusions 2011
- ▶ Article 27§3 – Conclusions 2011

Collective Complaints and State of Procedure in Ireland⁴

Collective complaints (under examination)

▶ *Association for the Protection of All Children (APPROACH) Ltd v. Ireland*
Complaint No. 93/2013

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

▶ *European Confederation of Police (EuroCOP) v. Ireland*
Complaint No. 83/2012

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

▶ *International Federation for Human Rights v. Ireland (No. 41/2006)*
No violation.

2. Complaints where the Committee has found a violation which has been remedied

None

3. Complaints where the Committee has found a violation which has not yet been remedied

-▶ - *World Organisation Against Torture (OMCT) v. Ireland (No. 18/2003)* : Violation of Article 17 (children's right to social, economic and legal protection), decision on the merits of 8 December 2004.

⁴ The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the [Collective Complaint webpage](#). Searches on complaints may also be carried out in the [European Committee of Social Rights Caselaw database](#).