



European  
Social  
Charter

Charte  
Sociale  
Européenne



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## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2012

(IRELAND)

Articles 1, 9, 10, 15, 18, 20, 24 and 25  
of the Revised Charter

*This text may be subject to editorial revision*



## Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts "conclusions" in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.<sup>1</sup>

*The European Social Charter (revised) was ratified by Ireland on 4 November 2000. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2011 and Ireland submitted it on 14 October 2011. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Article 1§2. The Government submitted its reply on 30 August 2012. Comments on the report from the Irish Congress of Trade Unions were registered on 3 November 2011.*

This report concerned the accepted provisions of the following articles belonging to the thematic group " Employment, training and equal opportunities ":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Ireland has accepted all Articles from this group.

The reference period was 1 January 2007 to 31 December 2010.

The present chapter on Ireland concerns 20 situations and contains:

- 6 conclusions of conformity: Articles 10§2, 10§3, 15§1, 15§2, 18§4, and 20.
- 8 conclusions of non-conformity: Articles 1§2, 1§4, 9, 10§1, 10§3, 10§5, 18§2 and 24.

In respect of the other 6 situations concerning Articles 1§1,1§3,15§3, 18§1,18§3 and 25 the Committee needs further information in order to assess the situation. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ireland under the Charter. The Government consequently has an obligation to provide this information in the next report on the articles in question."

The next Irish report deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),

- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2012.

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<sup>1</sup>*The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).*

## **Article 1 - Right to work**

### *Paragraph 1 - Policy of full employment*

The Committee takes note of the information contained in the report submitted by Ireland.

### **Employment situation**

The report underlines that Ireland is adjusting to a severe economic recession which has resulted in a significant contraction in the economy and the numbers of people in employment. The economy contracted for the third consecutive year in 2010, leaving real GDP and GNP around 12% and 15% respectively below 2007 levels.

The Committee also notes from Eurostat that the GDP growth rate in 2009 and 2010 in Ireland stood at -7.0 and 0.4 % respectively which was lower than the EU-27 average. As regards the employment and unemployment rates, Ireland performed worse than the EU-27 on average – the employment rate amounted to 60.0 % in 2010, a sharp decline from 69.2% in 2007.

The unemployment rate was also higher than that of the EU-27, with 13.7 % in 2010 against 9.7 % in the EU-27 on average. The youth unemployment rate was of 27.8 % in 2010, up from 8.9 % in 2007. As regards the long-term unemployment rate as a percentage of all unemployed persons, it amounted to 49.0 % in 2010, up from 29.6% in 2007.

The above statistical information shows a very different picture from the one in the last assessment of the situation (Conclusions 2006), where Ireland was going through record economic and employment growth, and its employment and unemployment levels were comparatively better than in other States Party on average. The Committee in particular notes the current sharp increase in the unemployment rate of young people and long-term unemployed persons, two particularly vulnerable groups.

### **Employment policy**

The employment policy pursued by the Government of Ireland is aimed at rising, by the year 2020, to 69-71% the employment rate for women and men aged 20-64, including through the greater participation of young people, older workers and low-skilled workers, and the better integration of legal migrants. This goal is contained in the National Reform Programme and has been submitted to the EU under the Europe 2020 Strategy. The Committee notes that the goal is less ambitious than the EU Headline target, which was to raise the employment rate to 75% by 2020. The Government has nevertheless committed to review its level of ambition in 2014, in the context of a proposed mid-term review of the Europe 2020 Strategy. The report states that the National Employment Action Plan (NEAP) supports activation measures for jobseekers and provides for a systematic engagement of the employment services with unemployed people. It has been in operation since 1998 and is being re-invigorated to ensure deeper engagement with those at risk of long-term unemployment.

As regards active assistance for labour market integration, the report mentions three key measures: (i) job search supports provided by FÁS Employment Service and the Local Employment Service: the total number of people completing FÁS training during 2010 amounted to 89,500 (compared to 40,300 persons in 2008); (ii) the introduction of training and education measures: in 2011 there were approximately 276,000 training and further education places available for the unemployed to access; (iii) higher education places, with an estimated 162,000 learners, including those unemployed, that will benefit from full-time education places.

According to Eurostat, public expenditure on active labour market policies in Ireland amounted to 0.85 % of GDP in 2009, which was around the average of the EU-27 countries (where the average public spending on active labour market measures as a% of GDP that year was 0.78%).

The Committee also notes from Eurostat that the activation rate in Ireland, that is, the number of persons taking part in an active measure as a percentage of the unemployed, was 25.9% in 2009. This was close to the average among EU-27 countries that year, which stood at 28.9%.

The Committee notes from an OECD Working Paper<sup>1</sup> that Irish performance on job search assistance has been ineffective. Around 25% of those persons eligible for assistance were never referred to FÁS for an activation interview, probably due to a mix of coordination failures and capacity constraints. Moreover, the working paper states that Irish spending on active labour market policies is heavily tilted towards job creation schemes, while there is evidence of their ineffectiveness as an activation tool. The Committee asks whether the outcome of measures provided by FÁS or the Education sector has been monitored, and more generally, how the effectiveness of labour market policies is evaluated.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ireland under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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<sup>1</sup>*Structural Reforms to Reduce Unemployment and Restore Competitiveness in Ireland*, by Alvaro Pina, 02-Dec-2011.

## **Article 1 - Right to work**

*Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The Committee takes note of the information contained in the report submitted by Ireland.

### **1. Prohibition of discrimination in employment**

The Committee previously examined the legal framework in Conclusions 2006.

The Committee recalls that the Employment Equality Act 1998 as amended by the Equality Act 2004 prohibits discrimination in employment on grounds of race, religious beliefs, disability, sexual orientation, gender, age, marital status, family status and membership of the Traveller Community. There is no prohibition of discrimination on grounds of political opinion in this legislation; the Unfair Dismissals Act prohibits dismissal on grounds of political opinion.

As regards discrimination on grounds of nationality, the Committee repeats its request for information on occupations or employment categories reserved for nationals.

The Equality Act prohibits both direct and indirect discrimination on the prohibited grounds.

The prohibition applies to all areas of employment including recruitment, dismissal and training.

Exceptions to the prohibition are made for positive action measures, and genuine occupational requirements as well certain exceptions for differences in treatment on grounds of age.

The legislation provides for a shift in the burden of proof in favour of a plaintiff in all discrimination cases.

The Office of the Director of Equality Investigations, re-named the Equality Tribunal in 2004, was set up under the Employment Equality Act 1998, as the quasi-judicial forum for redress for discrimination on any of the nine prohibited grounds in relation to employment.

The Equality Tribunal has the function of investigating or mediating or deciding complaints of unlawful discrimination. Where discrimination is found to have occurred, redress will be awarded – the redress available includes compensation and an order for equal pay/equal treatment and / or the direction of a specific course of action. In awarding redress, the Tribunal has the power to direct the practices shown to be discriminatory should cease.

The Committee recalls that it has repeatedly stated that remedies available to victims of discrimination must be adequate, proportionate and dissuasive. The Committee wishes to clarify its position on the issue of ceilings to compensation in discrimination cases<sup>1</sup>the Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. The ceiling for compensation that may be awarded in employment equality cases (other than on the ground of gender) was increased by the Civil Law (Miscellaneous Provisions) Act 2011 to provide for greater redress in situations of low-paid employment. The maximum amount that may be awarded by the Equality Tribunal in such cases is now 2 years remuneration or 40,000€, whichever is the greater. The Committee notes however that this is the absolute maximum the Equality Tribunal can award and may preclude damages from making good the loss suffered and from being sufficiently dissuasive. Therefore the Committee concludes that the situation is still not in conformity with Article 1§2 on this ground.

Decisions of the Equality Tribunal are binding and enforceable in law and may be appealed to the Labour Court (Employment Equality).

The Committee notes that the Government is currently considering the reform of the state's employment rights and industrial relations structure/procedures. The Committee wishes to be kept of all developments in this respect.

## **2. Prohibition of forced or compulsory labour**

### **Prison work**

In Conclusions 2006 the Committee noted that prisoners may be required to work and are remunerated for such work, however they may not be required to work for private firms and referred to is question in the General Introduction on prison work, the report provides no further information on this. The Committee repeats its request for this information.

For other matters relating to prison work not dealt with above, the Committee refers to its statement of interpretation and to its questions in the General Introduction.

### **Coercion in connection with domestic work**

The Committee refers to its statement of interpretation and question in the General Introduction in this respect

## **3. Other aspects of the right to earn one's living in an occupation freely entered upon** **Minimum periods of service in the armed forces**

The Committee recalls that it has previously found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence. This 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. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1, pp. 409-410) and the report does not refer to any change.

In Conclusions 2006 the Committee asked a General question on the protection of privacy at work. The report provides no information on this issue. However the Committee notes that the office of the Data Protection Commissioner was established under the 1988 Data Protection Act. The Data Protection Amendment Act, 2003, updated the legislation, implementing the provisions of EU Directive 95/46. The Acts set out the general principle that individuals should be in a position to control how data relating to them is used. And this applies to the workplace. The Committee refers to its statement of interpretation and question in the General Introduction in this respect.

### **Requirement to accept the offer of a job or training**

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Revised Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2. (See General introduction to Conclusions 2008).

The Committee refers to its statement of interpretation in the General Introduction in this respect. It asks that the next report include updated information on this issue.

### **Conclusion**

The Committee concludes that the situation in Ireland is not in conformity with Article 1§2 of the Charter on the grounds that



- 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.

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<sup>1</sup>*The Committee refers in this respect to the decision of the Court of Justice of the European Union of 2 August 1993 in the case of Marshall v. Southampton and South West Hampshire Area Health Authority (No. 2).*

## **Article 1 - Right to work**

### *Paragraph 3 - Free placement services*

The Committee takes note of the information contained in the report submitted by Ireland.

The report indicates that the number of completely new job-seekers registered with the National Training and Employment Authority (FÁS) fell from 116,000 in 2009 to 97,000 in 2010. At the same time, a total of 118,000 persons were referred to FÁS by the Department of Social Protection (DSP), a 15% rise over the level in 2009.

The report does not answer the question put in the previous conclusion concerning the number of placements made by the employment services.

The Committee therefore asks that the next report specify the placement rate – i.e. the number of placements made by FÁS as a percentage of the total vacancies notified to FÁS. It also again asks for information on the market share of placements by FÁS and private employment agencies, indicating their respective total number of placements as a proportion of the total number of persons recruited on the labour market.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ireland under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

The Committee takes note of the information contained in the report submitted by Ireland.

As Ireland has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are examined under these provisions.

In these conclusions, the Committee found that the situation with regard to vocational education and training of persons with disabilities (Article 15§1) was in conformity with the Charter.

However, it also found that the situation with regard to vocational guidance (Article 9) is not in conformity with the Charter on the ground that vocational guidance for nationals of other States Party which are not members of the European Union is not guaranteed.

Likewise, it found that the situation with regard to continuing vocational training for workers (Article 10§3) is not in conformity with the Charter on the ground of the indirect discrimination suffered by nationals of other States Party residing or working lawfully in the country since they are probably more affected than Irish nationals due to the length of residence condition.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 1§4 of the Charter on the grounds that:

- 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.

## **Article 9 - Right to vocational guidance**

The Committee takes note of the information contained in the report submitted by Ireland.

As Ireland has accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

Vocational guidance in the education system and in labour market in Ireland is provided by various government agencies in co-operation with the private sector. The public sector plays the dominant role in the provision of career information, guidance and counselling services.

The report states that Section 9 (c) of the Education Act 1998 requires schools to ensure that "students have access to appropriate guidance to assist them in their educational and career choices". The Department of Education and Skills (DES) gives schools an allocation that is equivalent to one guidance counsellor to every 500 students, with part time allocations for schools with smaller enrolments. There are an estimated 672 full-time guidance counsellor posts, who are qualified teachers that have obtained a post-graduate diploma in guidance and counselling. The service is free and is provided for all students. The annual budget allocated to this end is about € 40,000,000. The Committee asks how is this budget divided.

As to higher education institutions, the report states that all Irish universities and institutes of technology provide career advisory services, which are specialist services that are separate from the counselling and other student services offered in institutions. Whilst the Higher Education Authority (HEA) has issued guidelines on the provision of careers advisory services, the qualifications and training of those who staff them are determined by the institutions themselves. Approximately 100 staff, including careers advisers, placement officers, related support staff, and information officers, are currently employed in the careers services of these institutions.

Vocational guidance services for adults are provided by the Adult Education Guidance Initiative (AEGI), National Employment Services (NES) and by private sector, as described in the report. The Committee notes that there has been an increase in the state budget allocated to Adult Education Guidance Initiative (AEGI), from 6,574,230€ in 2007, to 6,854,000€ in 2010 with a total of 60,704 beneficiaries in 2010.

In its conclusion of 2007, the Committee found the situation not to be in conformity on the ground that access to vocational guidance for nationals of the other States Parties which are not members of the European Union was not guaranteed. The present report states, as previously, that nationals of the EU member states and refugees are guaranteed equal access to vocational guidance. The Committee, as in its conclusion of 2007, understands that access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed. The situation of Ireland is not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 9 of the Charter on the ground that access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Technical and vocational training and the granting of facilities for access to higher technical and university education*

The Committee takes note of the information contained in the report submitted by Ireland.

The Committee takes note of the legislation regulating vocational education and training as well as the education and training system described in the report.

In its previous conclusion (Conclusions 2007, Ireland), the Committee noted that a one year length of residence requirement applied to everyone for access to higher education, but not for secondary education. Nationals and non-nationals were thus treated in the same way. The Committee however considered that this amounted to indirect discrimination, since nationals of other parties lawfully residing or working in Ireland were potentially more affected than Irish nationals and found for this reason Ireland not to be in conformity with Article 10§1 of the Charter.

The current report states that refugees are entitled to the same access to education and training as Irish nationals but it provides no information as to possible changes on the matter of the requested length of residence for access to higher education. In the absence of such information in the report, the Committee maintains its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 10§1 of the Charter on the ground that the indirect discrimination of nationals of other states party due to the length of residence requirements does not guarantee equal access to higher education for all.

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

The Committee takes note of the information contained in the report submitted by Ireland.

The Committee takes note of the training programmes run by the National Training and Employment Authority (FAS), the skills provided under these programmes, their duration and attendance during the reference period. It notes that there have been no major changes to the situation which it has previously held to be in conformity with Article 10§2.

### *Conclusion*

The Committee concludes that the situation in Ireland is in conformity with Article 10§2 of the Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

The Committee takes note of the information contained in the report submitted by Ireland.

It takes note of the training programmes run by the National Training and Employment Authority (FAS) and, in particular, the Redundant Apprentice Placement Scheme, the skills provided under these programmes, their duration and attendance during the reference period.

In its previous conclusion (Conclusions 2007, Ireland), the Committee noted that a one year length of residence requirement applied to everyone for access to continuing vocational training. Nationals and non-nationals were thus treated in the same way. The Committee however considered that this amounted to indirect discrimination, since nationals of other States Parties lawfully residing or working in Ireland were potentially more affected than Irish nationals.

The current report states that refugees are entitled to the same access to education and training as Irish nationals but it provides no information as to possible changes on the matter of the requested length of residence for access to continuing vocational training. In the absence of such information, the Committee maintains its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 10§3 of the Charter on the ground that there is 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.

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Long term unemployed persons*

The Committee takes note of the information contained in the report submitted by Ireland.

It notes that there have been no major changes to the situation which it has previously held to be in conformity with Article 10§4.

The Committee takes note of the training programmes for the long-term unemployed persons, the skills provided under these programmes, their duration and attendance during the reference period. It takes note also of the allowances granted to participants in these programmes as referred to in the report. It notes from Article 1§1 that the unemployment rate is very high and it asks what specific measures, as regards vocational training, are taken in order to combat this problem.

### *Conclusion*

The Committee concludes that the situation in Ireland is in conformity with Article 10§4 of the Charter.



## **Article 10 - Right to vocational training**

### *Paragraph 5 - Full use of facilities available*

The Committee takes note of the information contained in the report submitted by Ireland.

The report states that the National Training and Employment Authority (FAS) does not charge fees in respect of vocational training. Apart from the Post Leaving Certificate (PLC) programme, learners can access all further education programmes free of charge. The Committee takes note of the training and apprenticeship allowances granted by FAS as referred to in the report.

However, in its conclusion of 2007, the Committee found that the situation was not in compliance with the Charter in view of the length-of-residence requirement imposed for entitlement to financial assistance for training. It noted that applicants' parents, or applicants themselves in the case of adult students, had to have been ordinarily resident in the administrative area of the local authority for one year in order to be eligible for maintenance grants. The rule applied to Irish nationals, EU nationals and non-EU nationals who were married to or the children of Irish or other EU nationals. EU nationals who did not satisfy this condition but had been ordinarily resident in an EU member state for one year and for a purpose other than receiving full-time education were eligible to apply for a means-tested grant covering fees. The Committee inferred from this that non-EU nationals did not receive any form of financial assistance with tuition fees or maintenance unless they satisfied the above rule concerning their spouse or children. In the absence of new information on this subject in the report, the Committee maintains its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident or working in Ireland are not treated equally with respect to fees (non-EU nationals) and financial assistance (EU and non-EU nationals).

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 1 - Vocational training for persons with disabilities*

The Committee takes note of the information contained in the report submitted by Ireland.

According to the Census of Population 2006, 9.3% of the population have a disability, representing 44,845 children up to 18 years of age and 348,940 of persons aged 18 or more.

Ireland signed on 30 March 2007 the Convention on the Rights of Persons with Disabilities adopted by the UN General Assembly in 2006, but has yet to ratify it.

### **Definition of disability**

According to the Disability Act 2005, "disability", in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment.

The National Physical and Sensory Disability Database includes a Measure of Activity and Participation based on the WHO international classification of functioning, disability and health (ICF).

### **Anti-discrimination legislation**

The Equal Status Act 2000 prohibits discrimination on the basis of disability in education. This prohibition covers admission or conditions of admission, access of students to any course, facility or benefit provided by the establishment, and expulsion. The Education for Persons with Special Educational Needs Act 2004 provides for the right to education of children and young people with disabilities in ordinary schools from pre-school to university level.

### **Education**

According to Section 2 of the Education for Persons with Special Educational Needs Act 2004, a child with special education needs must be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with the best interests of the child, and the effective provision of education for children with whom the child is to be educated.

The policy is to ensure the maximum possible integration of children with special needs into ordinary mainstream schools. There is a range of support services available to children who have been assessed as having special educational needs (special schools dedicated to particular disability groups, special classes attached to ordinary schools, placement in ordinary schools with back-up support). There are 80 Special Educational Needs Organisers throughout the country who are responsible for facilitating access to and coordinating education services for children with special needs in their areas. They belong to the National Council for Special Education which processes resource applications for children with disabilities who have special educational needs.

According to the National School Annual Census for the 2009/2010 school year, there were 6,905 pupils in Special Schools for children with special educational needs and 9,083 pupils in Special Classes in Mainstream National Schools. During the same period, there were 73 special classes attached to post-primary schools to which 369 pupils were enrolled.

The majority of pupils with disabilities however attend mainstream schools and classes supported by additional resources. It is estimated that 18% of children have special educational needs, that is 89,837 primary schools pupils and 63,124 post primary school pupils.

At primary school level, since 2005, additional learning support/resource teaching posts have provided as part of permanent staff to cater for pupils with less complex special needs. At primary level, children with special needs such as moderate, severe or profound general learning disabilities, severe emotional disturbance, and autism receive additional individual hours of resource teaching support. At Post Primary level, schools have a learning support teacher service. Approximately 9,950 learning/resource teacher posts are being provided in 2011 in primary and post primary schools to provide additional teaching support to pupils with special needs. Furthermore, 10,575 special needs assistant posts are being provided for primary, post-primary and special schools for the coming school year to support the care needs of pupils with disabilities. There are 56 early intervention classes for children with autism aged 2½ attached to mainstream schools. Funding is also provided through the home tuition programme for children with autism aged from 2½ to 5 who could not attend the early intervention class. An extended school year is also currently available for pupils who have either a severe/profound general learning disability or autism.

The Committee asks the success rate for children with disabilities as regards access to vocational training, further education and entry into the open labour market.

As regards general teacher training, the report indicates that student teachers for primary teaching are instructed on how to assess pupils' strengths, learning styles, and needs and on how to adapt curricular subjects for children of different abilities and those with special educational needs. As to Post Primary Initial Teacher Education, programmes include modules on the Psychology of Teaching and Learning including Special Educational Needs. The Department of Education and Skills provides a programme of continuing professional development to assist teachers in meeting the learning and teaching needs of pupils with special educational needs.

### ***Vocational training***

The National Training and Employment Authority (FÁS) offers comprehensive vocational training for disabled persons consistent with the Irish mainstream policy. Persons with a disability may call into a FÁS Employment Service Office or Local Employment Service Office to meet with an Employment Services Officer or Mediator to obtain information, advice and guidance in relation to training and employment. Disabled persons who meet the entry criteria can participate in mainstream programmes and services (e.g. mainstream training provision, back-to-education and work-experience programmes). The focus of the mainstreaming policy as implemented by FÁS is on recognising the diversity of disabled people and the need for an individualised approach to their training needs. In cases where person with particular disabilities may require enhanced support, special assistance may be provided, such additional training duration, adaptive equipment, enhanced programme content, reduced trainer-to-trainee ratios, staff specifically qualified in training people with disabilities. There is a wide range of new initiatives for people with disabilities such as a disability manual for all FÁS staff, a FÁS protocol for supporting learners with mental health issues, a FÁS Vocational Training Strategy for People with Disabilities, funding for a programme to prepare graduates with disabilities and potential employers, etc.

In 2009, 1,296 disabled persons completed courses in mainstream training and 1,495 in specialist training provision. In 2010, 1,231 disabled people completed training in mainstream provision and 743 disabled people completed specialist training programmes. Since 2003, the number of people with disabilities who completed training and employment programmes has increased (6,735 in 2003 and 7,595 in 2010) and the percentage of specialist training has remained constant as there is a maximum of 2,100 places in FÁS Specialist Training Provision.

A range of full-time and part-time educational programmes are delivered for adults with disabilities, in particular those who as children did not avail of or benefit from education in

schools. These services are in many instances delivered in cooperation with local Vocational Education Committees.

Rehabilitative advice, guidance and services are also provided through the Health and Security Executive. The report indicates that the number of persons with disabilities who received rehabilitative training during 2010 was 2,865.

The Committees recalls that under Article 10 of the Charter it regards vocational training as encompassing all types of higher education including university education. It considers that this interpretation applies, *mutatis mutandis*, to Article 15. According to the Equal Status Act 2000 non-discrimination is also guaranteed for higher education. In its previous conclusion (Conclusions 2007), the Committee asked for information in this respect. The report indicates that there are organisations which provide support for disabled students and teachers of students with disabilities in the Higher Education setting, such as the Association for Higher Education Access and Disability (AHEAD) which is an independent non-profit organisation. The Committee asks for further information on how non-discrimination is ensured in higher education, including the number of students with disabilities, reasonable accommodation measures, success rates, etc.

#### *Conclusion*

The Committee concludes that the situation in Ireland is in conformity with Article 15§1 of the Charter.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 2 - Employment of persons with disabilities*

The Committee takes note of the information contained in the report submitted by Ireland.

### ***Anti-discrimination legislation***

Discrimination on grounds of disability in employment is prohibited by the Equality Acts (Employment Equality Acts 1998 and 2004, the Equal Status Acts 2000 and 2004 and the Disability Act 2005). The relevant legislation also outlaws discrimination against an individual because he or she has taken a case or is giving evidence under the equality legislation, or has opposed by lawful means discrimination which is prohibited under this legislation. Complaints can be made with the Equality Authority and subsequently referred to the Equality Tribunal.

Furthermore, there is no restriction on any citizen whether disabled or not acceding to any profession compatible with their situation, as mandated by the Equality Acts and Equal Status Acts. Complaints can also be lodged with the Equality Tribunal.

In its previous conclusion (Conclusions 2007), the Committee asked whether there is an obligation for the employer to adjust working conditions, how reasonable accommodation is implemented in practice and whether there is case law on the issue.

According to the Equality Acts, employers are responsible for ensuring that the workplace is adapted for disabled employees. Orders may be issued if an employer fails to make the necessary adaptations. However, the employer's duty to adaptation is not absolute and factors such as an overall assessment of the undertaking's character, size and area of the economy etc. are weighed against consideration of the employee's condition. An employer's duty extends to a duty to offer the disabled employee a suitable position if one becomes vacant but not to create a new position.

Supports are available to employers to adapt their workplace to employees with disabilities. The Employee Retention Grant Scheme is available to employers when an employee acquires a disability and provides funding to identify accommodation or training to enable the employee to remain in his or her current position or to retain them to take up another position within the organisation; 90% of the costs of developing a strategy in this area can be funded up to €2,500, 90% of eligible programme costs can be funded up to 12,500€. The Work Equipment Adaptation Grant is available to employers who adapt equipment or the workplace to accommodate an employee with a disability up to a maximum of 6,350€.

The Committee asks again whether the reasonable accommodation obligation has given rise to cases before the courts. It also asks whether it has prompted an increase in employment of persons with disabilities in the open labour market. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with paragraph 2 of Article 15.

### ***Measures to encourage the employment of persons with disabilities***

The report indicates that measures to promote employment of occupationally-disabled jobseekers are mainstreamed in the employment support programmes designed to assist the most vulnerable groups in accessing employment. Programmes and services include employment support measures, wage subsidy schemes and programmes aiming at providing work experience.

For example, the Supported Employment Programme (SEP) is an open labour market initiative providing disabled persons who are "job-ready" with supports to help them access the open labour market. Job coaches provide a range of supports adapted to the individual needs of the jobseeker. Individuals who participate in this programme must achieve a

minimum of 8 hours' work per week by 6 months into the programme. Supports are provided for a maximum of 18 months but may be extended. The report states that 900 persons with disabilities are in employment as part of this programme, and that approximately 2,700 persons are engaged on the different phases of the programme.

The Wage Subsidy Scheme consists of financial incentives to employers to employ persons with disabilities who work more than 20 hours per week. Three types of subsidies are available:

- a general subsidy for any perceived productivity shortfall in excess of 20% for disabled employees compared to a non-disabled employee. The employee must work a minimum of 21 hours per week and a maximum of 39 hours. The rate of the subsidy is 5.30€ per hour;
- a subsidy based on the number of disabled employees in a company. The employer can apply for a grant to cover additional costs ranging from an additional 10% of wage subsidy for 3 to 6 disabled employees to a maximum of 50% of the wage subsidy for more than 23 disabled employees;
- where 30 or more disabled persons are employed, the employer can claim a grant of 30,000€ per year.

The Community Employment Programme is a temporary employment measure to provide work experience and training to disadvantaged persons. In 2009, 23% of total participants were persons with disabilities (5,386 persons). In 2010, they represented 19% of total participants, or 4,327.

The report presents other measures to encourage and facilitate entry into the labour market such as a grant to cover the costs of an interpreter for job interviews, a grant for a personal reader for job-related reading for the blind or visually impaired, funding for disability awareness schemes in companies.

The report states that sheltered employment in the Irish context is employment in an enterprise established specifically for the employment of people with disabilities and which is in receipt of designated funding from the Health Service Executive. It refers to employment under sheltered conditions where workers have a contract of employment, are covered by employment legislation and are in receipt of the minimum wage. The report states that, according to a recent survey, less than 200 persons were concerned by that type of employment. The Committee asks what the general rate of progression of disabled persons from sheltered employment to the open labour market. It also asks whether trade unions are active in sheltered employment facilities, as well as information on the requirements set by legislation about the calculation of salary paid to persons working in sheltered employment where production is the main activity.

### *Conclusion*

The Committee concludes that the situation in Ireland is in conformity with Article 15§2 of the Charter.

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

*Paragraph 3 - Integration and participation of persons with disabilities in the life of the community*

The Committee takes note of the information contained in the report submitted by Ireland.

### ***Anti-discrimination legislation and integrated approach***

The report underlines that Ireland's National Disability Strategy (NDS), launched in 2004, underpins the participation of people with disabilities in the society by building on existing legislation, such as the Equal Status Act 2000 and the Equality Act 2004, and a policy of mainstreaming. The Disability Act 2005 sets further objectives and long-term goals.

### ***Consultation***

The Committee recalls that people with disabilities should have a voice in the design, implementation and review of such a policy (Conclusions 2003, Italy).

The Committee notes that a Centre of Excellence in Universal Design was established in 2007 and that "universal design" refers to the design and composition of an environment so that it can be accessed, understood and used to the greatest extent possible by people regardless of their age, size or disability. The Committee asks more information on the outreach of this Centre and whether people are involved in its work.

### ***Forms of financial aid to increase the autonomy of persons with disabilities***

The Committee asks the next report to provide an overall picture of all benefits and other forms of financial assistance available to persons with disabilities.

### ***Measures to overcome obstacles***

#### ***Technical aids***

The Committee recalls that technical aids are available either for free or subject to a contribution towards their cost (Conclusions 2007, Finland). It asks the next report to provide information on the matter.

#### ***Communication***

The Committee recalls that telecommunications and new information technology must be accessible (Conclusions 2005, Estonia) and sign language must have an official status (Conclusions 2003, Slovenia).

The Sectoral Plan of the Department of Communications, Energy and Natural Resources, under the Disability Act 2005, sets targets for improving the range of accessible services in the sectors within its competence (broadcasting, communications, energy and marine). The Plan is reviewed every three years and amended and updated as necessary. The Committee asks for more information to be provided in the next report on its impact in practice.

According to the Broadcasting Act 2009, the Broadcasting Authority of Ireland (Údarás Craolacháin Na héireann, BAI) has to provide a regulatory environment to "facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs and in particular is accessible to people with disabilities". The BAI must revise the broadcasting rules and the specific steps that each broadcaster is required to follow in order to promote understanding and enjoyment by the deaf, or persons with a hearing impairment, the blind, or partially sighted persons, persons with a hearing impairment and partially sighted, of programmes transmitted on any broadcasting service provided by the broadcaster. Furthermore, Section 38(4) of the Act requires the Authority to publish annually a report "on progress made towards increasing accessibility of broadcasting services to people with

disabilities, and in particular, on progress made to achieve the targets set out in any broadcasting rules".

The Committee asks for information on telecommunication and information technology. It also asks what the legal status of sign language is.

### ***Mobility and transport***

The Department of Transport's Sectoral Plan has been developed in accordance with the provisions of the Disability Act 2005 and addresses the accessibility needs of people with mobility, sensory and cognitive impairments across all modes of transport (trains, buses, taxi and hackney services, air and marine transport). It also concerns parking facilities for motorists with disabilities. The Plan is expected to be completed by 2015. It is currently being reviewed to take stock of progress achieved and consider changes or additions to better achieve its goals.

The Department of Environment, Community and Local Government's Sectoral Plan sets out national objectives and guidelines for access to services and built facilities, and includes measures to be taken in the areas of the building and planning codes, heritage sites and public bodies. The objectives of the Plan are to promote universal access to public spaces, buildings and services owned and operated by local authorities and those owned and operated by the Department and bodies under the responsibility of the Department; to promote universal access to new developments and heritage sites; to ensure access to information on services provided by the Department and bodies under its responsibility, etc.

According to the Department's Sectoral Plan, each local authority is required to carry out an accessibility audit of all public libraries, roads and streets, pavements and pedestrian crossings, public buildings, parks, amenities and open spaces, heritage sites and harbours, and identify the remedial action necessary to make these buildings or facilities accessible for people with a disability. Locals are then required to draw up implementation plans setting out programmes to give effects to the commitments and objectives contained in the Disability Act 2005 and the Plan. Most local authorities have submitted their plans to the Department and the remainder are in the process of doing so. The Department provided over €21.7m over the period 2005-2010 to local authorities to help them meet their obligations under the Disability Act 2005 and the Plan.

Under section 28 of the Planning and Development Acts 2000 and 2010, guidelines for planning authorities on sustainable residential development in urban areas (cities, towns and villages) were issued in 2009. The guidelines stress that the provision of sustainable neighbourhoods should be guided by the principle of universal design whereby the urban environment is designed so that it can be accessed, understood and used by all people regardless of their age, size, ability and disabilities.

### ***Housing***

According to the Housing (Miscellaneous Provisions) Act 2009, a new standardised system of assessment for social housing support has come into effect. The assessment of needs examines the household's current accommodation, including its suitability for any person with a physical, sensory, mental health or intellectual disability within the household. New eligibility criteria and maximum income limits have been introduced in all local authorities. The allocation of social housing support is also changing with this Act with the introduction of a revised framework of grant aid to assist people with a disability with their accommodation needs. The National Housing Strategy for People with a Disability 2011-2016 sets out a framework for the delivery of housing for people with disabilities through mainstream housing policy. The Committee notes that these developments are outside the reference period and asks the next report to provide information on their implementation.



The Government has adopted a strategic response to meet the housing needs for people with disabilities. A new means of assessment of housing needs focuses on the identification of special needs with a view to providing an improved basis for policy development and service delivery and ensure that all people can live with maximum independence within their community. This assessment also takes into account the fact that the needs of households will be different at various stages of their lives.

The report provides information on the existence of Housing Adaptation Grant Scheme for Older People and People with a Disability. The types of works covered by these grants include the provision of access ramps, downstairs toilet facilities, stair-lifts, accessible showers, adaptations to facilitate wheelchair access, and any other works which are reasonably necessary for the purposes of rendering a house more suitable for the accommodation of a person with a disability. Grants are up to €30,000, and cover up to 95% of the costs of the works. The report refers to other similar grants essentially for the elderly but not exclusively.

### ***Culture and leisure***

As regards issues pertaining to physical access to public buildings or areas, see under section Mobility and Transport.

The Arts Council has launched a number of initiatives with an emphasis on arts and disability and has produced a “resource pack” to provide useful advice and information about improving access to arts.

The Committee asks for more information notably as regards access to sport activities.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ireland under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

The Committee takes note of the information contained in the report submitted by Ireland.

### ***Foreign population and migratory movements***

The Committee notes from another source<sup>1</sup> that in 2008 the inflow of foreign workers made 13,6 thousand which represents a significant decrease since 2004 when it stood at 34,1 thousand persons. As regards stocks of foreign-born population, it has been on the rise and made 739,2 thousand persons (16,7%) in 2008 compared to 461,8 thousand in 2004 (11,4%).

### ***Work permits***

The Committee notes that under the Irish legislation an employment permit must be obtained in advance in respect of a non-EEA national who is to be employed in the State (except Swiss Nationals in accordance with the terms of the European Communities and Swiss Confederation Act, 2001). Economic migration policy for nationals from outside the EEA is vacancy-driven rather than based on quotas or points. The core of the policy is the offer of a job.

The legal requirements and the issuing of employment permits are governed by the Employment Permits Acts of 2003 and 2006, which, set out in legislation the criteria in relation to the policies, the application, the grant and the refusal of employment permits. Employment permits are considered for highly skilled and/or highly paid positions, non-EEA nationals already legally resident in the State, with valid employment permits, as well as occupations where there is an officially recognised scarcity of workers.

According to the report, new schemes are provided for under the Employment Permits Act 2006 which give immigrants greater freedom, autonomy and control over their own employment and domicile choices. More specifically, the Committee observes that this Act has enabled workers, for the first time to apply and re-apply for their own permit. Besides, it has formalised the ability of workers to change their employer and move to another employment in order to take advantage of better conditions or career opportunities.

The most important new scheme operational as of 1 February 2007 is the green card, which replaced the Work Visa/Work Authorisation Scheme.

According to the report, Green Cards are available in respect of non-EEA nationals for occupations where there are high-level skills shortages in strategically important sectors of the Irish economy. Green Cards are granted to the employee for a period of 2 years after which they are eligible to apply for immigration permission to work in the State without the requirement for an employment permit. The Green Card also allows a pathway to long-term residency in Ireland after the initial two-year period.

As regards the scheme of work permits, they are granted to the employee, initially for a period of 2 years, and may be renewed for a further period of up to 3 years. They are required for occupations in the annual salary range from 30,000€ to 60,000€ for which Green Cards will not be issued, and in very exceptional cases for occupations below an annual salary of 30,000€ where there are significant labour shortages. These occupations have been identified on the advice of the Expert Group on Future Skills Needs. The employer must show that the position could not be filled from within the EEA, as required by Ireland's EU 'Community preference' rule.

### ***Relevant statistics***

The Committee recalls that the assessment of the degree of liberality, and therefore of conformity with Article 18§1, is based on figures showing the granting and refusal rates for work permits for first-time and for renewal applications by nationals of Contracting Parties (Conclusions XVII-2, Spain, Article 18§1).

In its previous conclusion the Committee asked for information regarding the number of applications made for work permits, numbers of work permits granted and rejected. It notes that in 2010 a total of 7542 new or renewed work permits were granted whereas 993 were refused. The Committee reiterates its request for information concerning the total number of work permit applications. In the meantime it reserves its position on this issue.

The Committee asks for information in the next report on the number of work permits granted to applicants from non-EEA States, as well as on work permit refusal rate with respect to applicants from such States, as this information is relevant in order to assess the degree of liberality in applying existing regulations governing access to national labour market. In this regard, the Committee observes that an absence or an extremely low number of work permits granted to nationals of non-EEA States Parties to the Charter, together with a very high work permit refusal rate with respect to applicants from such States, due to the application of rules like the so called “priority workers” rule (according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower), would not be in conformity with Article 18§1, since it would indicate an insufficient degree of liberality in applying existing regulations with respect to the access to the national labour market of nationals of non-EEA States Parties to the Charter.

#### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ireland under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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<sup>1</sup>*International Migration Outlook, OECD, 2010 edition*

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

The Committee takes note of the information contained in the report submitted by Ireland.

#### ***Administrative formalities***

The Committee notes that the Employment Permits Act 2006 comprehensively sets out in legislation the criteria in relation to the application, grant and refusal of employment permits. Under this act either the employer or the employee can be the applicant for an employment permit and the fee must be paid by the applicant. The Committee observes that these new regulations represent a simplification of earlier formalities according to which a work permit could only be issued to the employer and the worker had no possibility to apply for it or its renewal.

As regards the time it takes for work permit documents to be delivered, the Committee notes from the report that the Department's business target is to process all correctly completed applications within 15 working days.

#### ***Chancery dues and other charges***

As regards fees, according to the report, they range between €500 and €2,250, depending on the duration of the employment permit, whether new or renewed. However, there are categories that are exempted from the requirement to pay fees. These are permit applications under the spousal/dependant scheme, applications in respect of spouses of EU nationals, applications for unlimited permits etc. The Committee observes that the amount of fees has considerably gone up since its last examination of the situation under this provision, when they ranged between €65 and €500.

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that in order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and charges in question, that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

The Committee considers that the fees charged for permits are excessive and therefore the situation is not in conformity with the Charter.

#### ***Conclusion***

The Committee concludes that the situation in Ireland is not in conformity with Article 18§2 of Charter on the ground that the fees for work permits are excessive.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 3 - Liberalising regulations*

The Committee takes note of the information contained in the report submitted by Ireland.

#### **Access to the national labour market**

The Committee recalls that in the meeting of Article 18§3 of the Charter the conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive. States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of State Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as national of that country. The restrictions initially imposed with regard to access to employment must therefore be gradually lifted.

In its previous conclusions (Conclusions 2007 and 2001) the Committee held that is not in conformity with Article 18§3 of the Charter, due to the absence of measures to liberalise the regulations governing the employment of foreign workers. More specifically, the Committee noted that a foreign worker could neither change jobs, in so far as the permit was issued to a particular employer on the basis of the employee's unique skills or qualifications, nor change employer.

The Committee now notes from the report that following the introduction of the Employment Permits Act 2006 new permits are now issued for a period of two years and can be renewed for a period of three years. For those workers who have been working lawfully and who have held an employment permit for 5 consecutive years will now longer be necessary to have employment permit. They will receive immigration permission to reside and work in Ireland.

Furthermore, the Committee notes that the Employment Permits Act 2006 has formalised the ability of workers to change their employer and move to another employment in order to take advantage of better conditions or career opportunities. Besides, under this Act, the workers are enabled to apply and reapply for their own permits.

The Committee considers that measures have been taken to liberalise existing regulations governing the employment of foreign workers.

The Committee asks for information in the next report on the number of applications for work permits submitted by nationals of non-EEA States, as well as on the grounds for which work permits are refused to nationals of non-EEA States parties to the Charter. In this respect the Committee observes that should refusals always or in most cases derive from the application of rules – like the so called “priority workers” rule –, according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower, determining as a consequence to discourage nationals of non-EEA States from applying for work permits, this would not be in conformity with Article 18§3, since the State would not comply with its obligation to liberalise regulations governing the access to national labour market with respect to nationals of non-EEA States Parties to the Charter.

The Committee asks for information in the next report about the measures eventually adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market. Such information shall concern the category of dependent employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.

### ***Self-employment***

Persons wishing to work in a self-employed capacity in Ireland must, prior to entering Ireland, submit a business plan providing evidence that they have sufficient financial means. They must also produce a statement of good character issued by the authorities of the country in which they resided for the previous ten years, and must have a capital of €300 000 available. The Committee previously noted the restrictive nature of these regulations. It asks whether they apply to all categories of self-employed foreign workers.

### ***Exercise of the right of employment / Consequences of job loss***

The Committee notes from the report that under the Employment Permits Act 2006 a permit holder made redundant will continue to have up to six months from the date of redundancy to seek alternative employment and longer if their immigration status will allow. The Committee understands that a foreign worker's residence permit will not be withdrawn if such worker loses his or her job and that such worker will be given an opportunity to seek another employment. The Committee asks if this understanding is correct.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by France under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

*Paragraph 4 - Right of nationals to leave the country*

The Committee takes note of the information contained in the report submitted by Ireland.

The Committee notes that the situation it previously (Conclusions 2007) considered to be in conformity with the Charter has not changed. Therefore it reiterates its previous finding of conformity.

*Conclusion*

The Committee concludes that the situation in Ireland is in conformity with Article 18§4 of the Charter.

## **Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination**

The Committee takes note of the information contained in the report submitted by Ireland.

### ***Legal framework – Equal rights***

The Committee recalls that it examined the legal framework in some detail in Conclusions 2006 and found that the situation was in conformity with the Charter in this respect. The Committee notes that there has been no significant change to the legal framework since.

The Committee recalls that there is a ceiling on the amount of compensation that may be awarded by the Equality Tribunal but if the case is instead referred to the Circuit Court the normal ceiling on awards will not apply and it may order compensation as appropriate in the case.

The Committee notes that there are considerable delays in the processing of cases before the Equality Tribunal, on average three years. The Committee notes that measures have been taken in order to reduce the average time from receipt to closing a case to 12 months. It wishes to receive information on the success of these measures.

The Committee previously requested information on whether domestic law made provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison.

The Employment Equality Acts allow, in certain circumstances, for comparisons of pay and jobs to extend outside the company directly concerned. Section 2 (2) of the Acts refers to "associated companies" which is defined as follows: "For the purposes of this Act, two employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control." Additionally, Section 19 of the Acts, which deals with the entitlement to equal remuneration for women and men, refers to where someone is "employed to do like work by the same or an associated employer". Under Section 29 of the Acts, a similar provision pertaining to equality on a number of other grounds, which include marital status and family status, also refers to employment "to do like work by the same or an associated employer". The Committee refers to its statement in the General Introduction in this respect and finds that the situation is in conformity with the Charter.

The Committee previously asked whether equal treatment between men and women is guaranteed with respect to social security, in particular for benefits related to employment. The Committee notes that occupational pensions are not covered by the Employment Equality Acts and are covered instead by Part VII of the Pensions Act 1990 as amended by the Social Welfare (Miscellaneous Provisions) Act 2004, from 5<sup>th</sup> April 2004, it is unlawful to discriminate directly or indirectly in relation to occupational pensions on inter alia, grounds of gender, this also includes 'Occupational benefits' include benefits in the form of pensions relating to termination of service, retirement, old age or death, interruptions of service by reason of sickness or invalidity (income continuance), accidents, injuries or diseases arising out of or in the course of a person's employment, unemployment, expenses incurred in connection with children or other dependants. The Protection of Employees (Part-Time Work) Act 2001 provides that part-time employees who work less than 20% of the normal hours of work of a comparable full-time employee may be treated less favourably in respect of pensions. The Committee asks what this means in practice.

Pensionable age has been the same for men and women in Ireland both in occupational pensions and also in statutory retirement age. The law prohibits gender discrimination in respect of survivor's benefit or a deceased member's widow or widower.

### ***Specific protection measures***



The Committee recalls that it examines measures relating to maternity protection and family responsibilities under Article 8 and 27 of the Charter.

### ***Position of women in employment and training and Measures to promote equal opportunities***

According to the European Commission: Report Equality between Women and Men 2010 Ireland is ranked in 13th place in terms of the Gender Pay Gap (unadjusted), marginally better than the EU average; 17.1%.

In 2009, the Economic and Social Research Institute (ESRI) and the Equality Authority published an analysis of the Gender Wage Gap in Ireland: Evidence from the National Employment Survey 2003".

The key findings from the research were as follows: for full-time employees, the raw gap was about 18% and the adjusted gap was just under 7%. The difference in the labour market experience levels of men and women which widened the gap by 3 percentage points, equivalent to 14% of the raw gap – was the largest single influence in explaining the gender wage gap. Many other factors such as a higher incidence of supervisory responsibility, longer tenure and higher trade union membership among men, and a higher incidence of part-time work among women – also widened the gap. Centralised wage bargaining, specifically the implementation of the national wage agreement, benefited women within both the full-time and part-time labour markets. The study found that the existence of some family-friendly policies within firms, specifically career-breaks, helped to reduce the gender wage gap. The research also demonstrated that social partnership arrangements, through the implementation of the national wage agreement, have helped to standardise wages both within and across firms and sectors, and this in turn has improved the relative position of women across all labour markets.

The Committee asks to be kept informed of all developments in this area.

The 2000–2007 Equality for Women Measure, was succeeded by a new Measure launched in 2008. The 2008–2013 ‘Equality for Women’ Measure is a programme of positive-action measures aimed at enhancing women’s skills, and fostering the engagement and advancement of women in areas of Irish society and decision making where they are under-represented. The Measure, which is co funded by the European Social fund under the Human Capital Investment Operational Programme, focuses on four main strands:

- 1. Access to Employment
- 2. Developing Female Entrepreneurship
- 3. Career Development for Women in Employment
- 4. Fostering Women as Decision-Makers

Since 2009, the Equality for Women Measure has provided training to over 4,700 women through the funding of 76 projects. A significant proportion of the participants are from vulnerable groups.

Other measures taken during the reference period to promote equal opportunities include the training of Women in and for Employment programme by FAS, and the provision of childcare to support women in employment and training. A successor to the Equal Opportunities Childcare Programme 2000–2006 was adopted, the National Childcare Investment Programme 2006-2010, was introduced and is expected to create a further 25,000 new childcare places. In addition a system of subsidies is in place to support the cost of childcare for disadvantaged families who may be in employment or and who would otherwise be unable to afford childcare or remain in work, and to enable those who are engaged in certain education and training programmes to access childcare facilities for the duration of their course. In addition Ireland’s National Women’s Strategy (NWS) 2007-2016

was launched in 2007. It is the Government's statement of priorities in relation to the advancement of women in Irish society. It has three themes of

- 1. equalising socio-economic opportunity for women,
- 2. ensuring the wellbeing of women and
- 3. engaging women as equal and active citizens and includes the objective to decrease the gender pay gap.

*Conclusion*

Pending receipt of the information requested the Committee concludes that the situation in Ireland is in conformity with Article 20 of the Charter.

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

The Committee takes note of the information contained in the report submitted by Ireland.

- *the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24.a and the Appendix to Article 24);*
- *penalties and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24.b).*

### **Scope of protection**

The Committee recalls that under Article 24 of the Charter all workers who have signed an employment contract are entitled to protection in the event of termination of employment. According to the Appendix to the Charter, certain categories of workers can be excluded, among them workers undergoing a period of probation.

The Committee notes from the report that some categories of employees are not covered by the Unfair Dismissal legislation, such as: employees with less than one year's continuous service; employees who had reached the normal retiring age; employees working for a close relative in a private house or farm; members of the Garda Síochána and the Defence Forces; persons undergoing training by the National Training and Employment Authority; managers of local authorities.

As regards exclusion of employees undergoing a period of probation, according to the report, for this exclusion to apply, a written employment contract must be in place and the duration of the probation must be one year or less and be specified in the employment contract. An employee must have been in the same employment for at least a year in order to bring a claim for unfair dismissal. However, an employee with less than 12 months' continuous service can still bring a claim for unfair dismissal if the dismissal resulted from trade union membership or any matters connected with pregnancy or birth.

In this regard, the Committee recalls that under Article 24 exclusion of employees from protection against dismissal for six months or 26 weeks during the probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification (Conclusions 2005, Cyprus). The Committee considers that one year period of exclusion is manifestly unreasonable and therefore the situation in Ireland is not in conformity with the Charter on this ground.

As regards exclusion of employees having having reached the normal retiring age from the protection of the Unfair Dismissals legislation, the Committee holds that such exclusion is contrary to the Charter as it goes beyond what is permitted by the Appendix to the Charter. Therefore, the situation is not in conformity on this ground.

### **Obligation to provide a valid reason for termination of employment**

*The Committee recalls that under Article 24 the following are regarded as valid reason for termination of an employment contract:*

- *reasons connected with the capacity or conduct of the employee;*
- *certain economic reasons.*

The Committee notes from the report that Section 6(4) of the Unfair Dismissals Act 1977 sets out potentially fair reasons why a dismissal may occur, such as: the capability, competence or qualifications of the employee; the conduct of the employee; the redundancy of the employee; if continuance of the employment would result in a breach of other legislation; other substantial grounds. According to the report, Section 6(6) of this Act provides that it shall be for the employer to show that the dismissal resulted wholly or mainly from one or more of the matters specified above or that there were other substantial grounds

justifying the dismissal. In general, all dismissals are deemed to be unfair unless, having regard to all the circumstances, the employer can show that there were substantial grounds justifying the dismissal.

According to Section 14(4) of the Unfair Dismissals Act 1977 where an employee is dismissed, the employer shall, if requested, furnish to the employee within 14 days of the request, particulars in writing of the principal grounds for dismissal.

To enable it to decide whether the reasons the Irish courts accept as justifying termination of employment correspond to the valid reasons required by Article 24 of the Charter, the Committee asks for information in the next report on judgements and decisions establishing relevant case-law showing how the provisions relating to termination of contracts are interpreted by the courts.

### **Prohibited dismissals**

*The Committee recalls that a series of Charter provisions require increased protection against termination of employment on certain grounds:*

- *Articles 1§2, 4§3 and 20: discrimination;*
- *Article 5: trade union activity;*
- *Article 6§4: strike participation;*
- *Article 8§2: maternity;*
- *Article 15: disability;*
- *Article 27: family responsibilities;*
- *Article 28: worker representation.*

*Most of these grounds are also listed in the Appendix to Article 24 as non-valid reasons for termination of employment. However, the Committee will continue to consider national situations' conformity with the Revised Charter with regard to these reasons for dismissal in connection with the relevant provisions. Its examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Revised Charter, namely "filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" and "temporary absence from work due to illness or injury".*

As regards the first ground, the Committee considers (Conclusions 2003, Statement of Interpretation on Article 24) that national legislation should include explicit safeguards against termination of employment on these two grounds. Indeed, safeguarding persons who resort to the dismissal, is essential in any situation in which a worker alleges a violation of the law. In the absence of any explicit statutory ban, states must be able to show how national legislation conforms to the requirement of the Charter.

According to the report, Section 6(1) of the Unfair Dismissals Act 1977 stipulates that a dismissal will be regarded as unfair if the resulted from the following: an employee's trade union membership; religious or political opinions of the employee; legal proceedings against an employer where an employee is party or a witness; the race or colour of the employee; sexual orientation of the employee; the age, any matters connected with pregnancy or giving birth.

As regards 'temporary absence from work due to illness or injury', the Committee recalls that under Article 24 a time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absence

employee. Additional protection must be offered, where necessary, for victims of employment injuries or occupational diseases.

The Committee notes from the report that the definition of 'disability' under the Employment Equality legislation has been interpreted to include a wide range of medical conditions. The Committee asks whether the legislation protects workers against dismissal on the ground of temporary absence from work due to illness. It also asks what is the time limit placed on protection against dismissal in such cases.

### ***Remedies and sanctions***

The Committee takes note of the Employment Equality Acts 1998 and 2004 which provide redress for situations where an employee has been dismissed and the reason for the dismissal was related to one of the grounds of discrimination under employment equality legislation.

If an employee considers that he or she has been unfairly dismissed, the employee may submit a claim for redress under the Unfair Dismissals Acts 1977 to 2007 either to the Rights Commissioners' Service of the Labour Relations Commission or to the Employment Appeals Tribunal. The employee can choose to take a case either under the Employment Equality legislation or under the Unfair Dismissals Acts. The claim must be submitted within 6 months of the date of dismissal.

The Committee notes that in most situations where a dismissal has occurred, the burden of proof lies with the employer to prove that the dismissal was fair.

According to the report, redress/compensation for unfair dismissal may take the form of either reinstatement, or re-engagement (re-employment either in the position held immediately before the dismissal or in a different position) or financial compensation. The level of financial compensation depends on the amount of financial loss incurred by the employee. If the adjudicative body determines that financial compensation is the most appropriate form of redress, and if the employee can demonstrate that financial loss has occurred as a result of the dismissal, financial compensation of up to a maximum of two year's salary may be awarded. There is no minimum level of financial compensation but there is a maximum award of two years' salary where financial loss has occurred and a maximum of four weeks' salary where no financial loss has occurred. The choice of redress is at the discretion of the relevant adjudicative body.

In this connection the Committee recalls that employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation is appropriate if it includes reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body.

The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee asks whether damages for non-pecuniary loss can be recovered through other legal avenues.

### ***Conclusion***

The Committee concludes that the situation in Ireland is not in conformity with Article 24 of the Charter on the grounds that:

- legislation permits the exclusion of employees from protection against dismissal for one year during the probationary period;
- 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.

## **Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer**

The Committee takes note of the information contained in the report submitted by Ireland.

The Committee takes note of the information provided in the Irish report.

The Committee notes from the report that the purpose of the Insolvency Payments Scheme, which operates under the Protection of Employees Act 1984, which in turn derives from EU Council Directive 80/987 and 2002/74/EC, is to protect certain outstanding pay-related entitlements due to employees in the event of the insolvency of their employer. Payments are made from the Social Insurance Fund.

According to the report a number of entitlements are protected in the case of the insolvency of the employer, such as, among others, arrears of wages, deductions made from wages by agreements but not paid to the relevant body, arrears of sick pay due under an occupational sick pay scheme, holiday pay.

According to the Appendix to the Charter, the workers' claims for wages relating a prescribed period, shall not be less than three months under a privilege system and eight weeks under a guarantee system.

According to the report and another source<sup>1</sup>, some limitations and conditions apply to payments made under the Scheme. All entitlements based on pay are limited to a maximum weekly rate which is revised periodically. The current limit is 600€ per week. There is also a limit of eight weeks for arrears of pay, sick pay, holiday pay and pay in lieu of statutory notice. In this connection, the Committee recalls that States may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level. The Committee asks what is the national average weekly wage.

The Committee notes from the report that in 2010 a total of 23,263 new claims were received and 23,585,348€ was the insolvency amount paid out.

The Committee recalls that under Article 25 of the Charter in order to demonstrate the adequacy in practice of the protection, States must provide information, inter alia, on the average duration of the period when a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution. The Committee requests that the next report provide this information.

The Committee further recalls that protection must be provided to workers also in situations where the employer's assets are insufficient to justify the opening of formal insolvency proceedings (Conclusions 2003). In this regard it notes from the above source that the Insolvency Payments Scheme does not cover the cases where a business shuts down without becoming legally insolvent. For an employee to come within the Scheme, an employer must be legally insolvent under the legislation under which the Scheme operates. If a business shuts down without becoming legally insolvent the employer remains responsible for the payment of employees' pay and other entitlements. The Committee asks what guarantees exist for workers that their claims will be satisfied in such cases and what would be the amount of claims satisfied.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Ireland under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

<sup>1</sup><http://www.welfare.ie/EN/Schemes/RedundancyandInsolvency/insolvency/Pages/Index.aspx>