

International Conventions on Social, Economic and Citizenship Rights

The social, economic and citizenship rights of people living in Ireland derive from the Constitution of Ireland and the laws of the country, the Treaties and law of the European Union and, to some extent, from various international conventions. Here we list the most important of these conventions and briefly explain how they operate.

Irish constitutional rights and rights arising from EU legislation are directly enforceable in the Irish courts. There is a significant difference between EU law and other international laws and conventions. Rights set out in other international instruments are usually not directly enforceable (but they may have persuasive effects in court cases). In order to be directly enforceable, they

need to be incorporated into Irish domestic law. International conventions do set standards by which domestic laws and actions may be judged. Apart from the EU, the main bodies which set out international obligations on social, economic and citizenship rights are the Council of Europe and the United Nations.

EU treaties and Laws

The treaties governing the EU and EU Directives and Regulations provide for a wide range of social, economic and citizenship rights. These rights are directly enforceable. The EU has been attempting to consolidate these rights into one binding instrument. The Charter of Fundamental Rights of the EU is a result of this effort.

Charter of Fundamental Rights of the EU

This Charter was agreed in 2000 by a Convention composed of representatives of the Member States, the national parliaments and the institutions of the EU (similar to the composition of the present Convention on the Future of Europe). The Charter was drafted as if it were to be incorporated in the Treaties. It was "proclaimed" at the Nice summit in 2000. The practical effect of this is that the Charter does not have enforceable legal status. Its precise status is one of the issues being considered by the Convention on the Future of Europe. The Charter includes all of the rights which are covered by the European Convention on Human Rights (ECHR) and it also includes a wide range of social and economic rights.

The document draws on a number of sources of fundamental rights, including

- ◆ the European Convention on Human Rights
- ◆ the European Social Charter of the Council of Europe
- ◆ the Community Charter of the Fundamental Social Rights of Workers
- ◆ rulings by the Court of Justice
- ◆ rulings by the European Court of Human Rights
- ◆ primary and secondary Community legislation
- ◆ common constitutional traditions
- ◆ various international conventions.

The opening articles are devoted to human dignity, the right to life and the right to integrity of the human person, freedom of expression, the right to conscientious objection, etc. The chapter on solidarity includes social and eco-



information for all

conomic rights such as the right to strike, the right of workers to information and consultation, the right to reconcile family and working life, the right to social security benefits and to social services and the right to healthcare.

The charter also includes rights in areas such as data protection rights, bans on eugenics and the reproductive cloning of human beings, environmental rights, the rights of children and older people and the right to sound administration.

Discussions about the Charter have been held at the Convention on the Future of Europe – www.europa.eu.int/futurum/ and at the Forum on Europe – www.forumoneurope.ie

Council of Europe

The Council of Europe is composed of virtually all the countries on the continent of Europe and so is much larger than the EU. It has established a number of Conventions, the most important of which is the European Convention on Human Rights.

European Convention on Human Rights

Ireland is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms – usually called the European Convention on Human Rights (ECHR) which was agreed by the Council of Europe. The Convention has not yet been enacted into Irish domestic law. A Bill to incorporate it was published in 2001 and is before the Oireachtas at present.

The Convention was agreed in 1950 and a number of Protocols have been added since then. These have the same effect as the original Convention. The Convention and its Protocols set out a list of rights and freedoms which states are obliged to guarantee to everyone within their jurisdiction. Among other rights, it includes the right to life, to protection against torture and inhuman treatment, to freedom and safety, to respect for private and family life and to education.

The ECHR has its own implementation mechanism. Complaints about a breach of the Convention may be made by any person to the European Court of Human Rights in Strasbourg. The Court's judgment is binding on the state concerned but there is no further mechanism by which the State can be forced to respect it. Ireland was found to be in breach of the ECHR on a number of occasions and, each time, has introduced corrective measures.

The European Social Charter

The Council of Europe drew up this Charter (There is also an EU Social Charter which is not legally binding). It outlines the obligations of states in relation to economic and

social rights, particularly in the sphere of employment, health and social welfare benefits. Each country is obliged to report on its implementation of the Charter to the European Committee of Social Rights which may make recommendations to governments. Certain trade unions and employers groups may make complaints to the Committee.

Other Council of Europe Conventions and Instruments

Among the other Council of Europe Conventions and Instruments are:

- ◆ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- ◆ Framework Convention for the Protection of National Minorities.
- ◆ European Convention on Data Protection
- ◆ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children - ensures that children who have been improperly removed across a frontier are returned.
- ◆ Convention on Human Rights and Biomedicine,
- ◆ European Convention on civil liability for damage resulting from activities dangerous to the environment
- ◆ Convention on the Protection of the Environment through Criminal Law
- ◆ European Convention on Nationality
- ◆ European Convention on Social Security
- ◆ European Code of Social Security
- ◆ European Convention on Social and Medical Assistance
- ◆ European Convention on the Legal Status of Migrant Workers.

There is no direct enforcement mechanism for these. However, some of them are being adopted as EU law and will, therefore, be implemented in that way.

Council of Europe Recommendations

The Council of Europe has issued a range of recommendations which are not legally binding. For example, there is a Council of Europe Recommendation for the Legal Protection of Persons Suffering from Mental Disorders.

United Nations Conventions

There is a substantial number of UN Conventions and other instruments and we only mention the most important here. They are not directly enforceable in Irish law.

UN Conventions; the process

The process of drawing up a UN Convention is usually lengthy. Any member state of the UN can start the process. The negotiations are conducted by the diplomatic representatives of each country. In recent years, the member states of the EU sometimes take a common position on proposed Conventions and may negotiate as a unit but this does not always happen.

There is a proposal at present to draw up a UN Convention to promote the rights and dignity of people with disabilities. The UN has set up an Ad Hoc Committee (under UN resolution 56/168) to consider proposals for such a Convention. The European Commission has issued a Communication which sets out its position regarding such an instrument. Attempts are being made to have a common EU position on this but it is not yet clear if this will happen.

When a Convention is agreed, it is open for signature and ratification by the member states of the UN. The Convention usually comes into effect when the required minimum number of states ratify it. For example, the International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature and ratification by the General Assembly of the UN in 1966. It came into force in 1976 when, as required, 35 countries had ratified it. The Convention on the Rights of the Child was adopted in 1989 and came into force in 1990 after the required 20 countries had ratified it.

UN Conventions are signed by individual countries and then ratified. There is frequently a long delay between signing and ratifying. This is sometimes because domestic legislation is necessary in order to make ratification meaningful. For example, the International Convention on the Elimination of All Forms of Racial Discrimination was signed by Ireland in 1968 but not ratified until 2000. This was because the required legislation – the Employment Equality Act and the Equal Status Act – were not in force until then.

When ratifying, it is open to countries to make what are called reservations – this means that the country does not consider itself bound by the particular provision. Countries may also issue declarations which are usually explanations of their understanding of what is meant. They may add comments as well – sometimes these comments relate to other countries' reservations. Protocols may be added to existing Conventions and these have to be ratified in the same way as the original conventions. In general, Protocols have the same legal effect as the document to which they are attached. Countries which ratify Conventions are usually called "states parties".

National reports on ratification of Conventions

One of the requirements of most of the Conventions is that each country must compile a national report on its

implementation at set intervals. This report is analysed by the relevant Committee which oversees the Convention. The Committee may hold hearings and it is usual for relevant voluntary organisations to have an input into the process – both at national level and at the UN Committee level. For example, Ireland is obliged to issue National Reports from time to time on our implementation of the International Convention on the Rights of the Child. This report is drawn up by government with input from the voluntary organisations dealing with children's issues. The Committee on the Rights of the Child examines the report. The Committee may question government representatives on what they are doing and may invite voluntary or other organisations to give evidence. The Committee may then make observations on the national report. Copies of Ireland's national reports and the concluding observations of the relevant Committee on that report are available on the Department of Foreign Affairs website.

International Covenant on Economic, Social and Cultural Rights

This was adopted in 1966 and came into force in 1976. It was signed by Ireland in 1973 and ratified in 1989. It does not set out rights as such but instead lists standards towards which parties to the Covenant are obliged to work. It is monitored by the Committee on Economic, Social and Cultural Rights (CESCR). This meets 3 times a year. Countries must submit an initial report within 2 years and then every 5 years.

The Convention covers areas such as the right to work, just and favourable conditions of work, right to form trade unions, to strike, right to social security, family rights, right to highest attainable standard of physical and mental health, education, to take part in cultural life

The Committee on Economic, Social and Cultural Rights (CESCR) issues general comments on articles of the Covenant from time to time. These comments are aimed at promoting the implementation of the Covenant, helping the countries to fulfil their reporting obligations and to clarifying the intention, meaning and content of the Charter. Among the General Comments issued to date are
General Comment No. 4 (1991) on the right to adequate housing
General Comment No. 5 (1994) on persons with disabilities
General Comment No. 6 (1995) on the economic, social and cultural rights of older persons
General Comment No. 14 (2000) on the right to the highest attainable standard of health.

The CESCR examined Ireland's second report on the Covenant and made observations on it in May 2002. These observations included, for example, concern about the proposed Disability Bill, 2001, the "persistence of discrimination" against people with physical and

mental disabilities especially in employment, social security and health, the status of employees in sheltered workshops, the absence of a rights based approach in the National Anti-Poverty Strategy and in the Health Strategy

Ireland has to submit its next report by June 2007.

International Covenant on Civil and Political Rights

This was adopted in 1966 and came into force in 1976. It was signed by Ireland in 1973 and ratified in 1989. It is monitored by the Human Rights Committee which meets 3 times a year. Countries must submit an initial report within a year and every 5 years after that.

International Convention on the Rights of the Child

This was adopted in 1989 and came into force in 1990. It was signed by Ireland in 1990 and ratified in 1992. It is monitored by the Committee on the Rights of the Child which meets three times a year. Countries must submit an initial report within two years and every five years after that. Among other things, this established the principle that the best interests of the child is the primary consideration in all actions concerning children. It also deals with the detailed social and economic rights of children (including children with disabilities) and parents.

The International Convention on the Elimination of Discrimination Against Women

This was adopted in 1979 and came into force in 1981. It was ratified by Ireland in 1985. It is monitored by the Committee on the Elimination of Discrimination against Women which meets twice yearly. Countries must submit an initial report within 1 year and every 4 years after that.

International Convention on the Elimination of All Forms of Racial Discrimination

This was adopted in 1965 and came into force in 1969. It was signed by Ireland in 1968 and ratified in 2000. It is monitored by the Committee on the Elimination of Racial Discrimination which meets twice a year. Countries must submit an initial report within 1 year and every two years after that.

Convention Relating to the Status of Refugees

This was adopted in 1951 and came into force in 1954. It was ratified by Ireland in 1954. It is frequently called the Geneva Convention (even though there is a number of Geneva Conventions). Its provisions are included in the Refugee Act 1996.

Further Information

The Department of Foreign Affairs website has a section on human rights which gives information on the various covenants, details of any reservations and comments by Ireland, copies of the national reports and the various committees' observations and relevant links.
www.gov.ie/iveagh

The Council of Europe Website has information on its activities, covenants and other instruments
www.coe.int

The European Court of Human rights website has information on the European Convention on Human Rights and the cases which have been decided under it.
www.echr.coe.int

The United Nations website has a comprehensive library of all UN documents: www.un.org

The website of the UN High Commissioner for Human Rights has a range of information:
<http://www.unhchr.ch/>