

DECISION ON ADMISSIBILITY

16 October 2007

International Federation of Human Rights Leagues (IFHR) v. Ireland

Complaint No. 42/2007

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 225th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, First Vice-President
Tekin AKILLIOĞLU, Second Vice-President
Jean-Michel BELORGEY, General Rapporteur
Nikitas ALIPRANTIS
Stein EVJU
Mrs Csilla KOLLONAY LEHOCZKY
Mssrs Lucien FRANCOIS
Lauri LEPPIK
Colm O' CINNEIDE
Mrs Monika SCHLACHTER
Birgitta NYSTROM
Lyudmila HARUTYUNYAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 22 February 2007, registered on 26 February 2007 as number 42/2007, lodged by the International Federation of Human Rights Leagues (hereafter referred to as “the IFHR”) v. Ireland and signed by its President, Mr Sidiki KABA, requesting the Committee to find that Ireland is in breach of its obligation to satisfactorily apply Article 23, in conjunction with Article E and Article 12§4 of the Revised European Social Charter (“the Revised Charter”);

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, to Articles 23, 12§4 and E which read as follows:

Article 23 – The right of elderly persons to social protection

Part I: “Every elderly person has the right to social protection”

Part II: “With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
 - b the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution”.

Article 12 – The right to social security

Part I: “All workers and their dependents have the right to social security”.

Part II: “With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

- 1 (...)
- 2 (...)
- 3 (...)
- 4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

- a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
- b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties”.

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status”.

Having regard to the observations of 15 June 2007 of the Irish government (“the Government”) on admissibility;

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session (“the Rules”);

Having deliberated on 16 October 2007;

Delivers the following decision, adopted on the above date:

1. The IFHR alleges that Ireland discriminates against persons who are in receipt of Irish Contributory Old Age Pension and who do not reside permanently in Ireland in that it refuses to allow them access to a Free Travel scheme when they return to Ireland on a visit. It considers that this situation constitutes a violation of Article 23 in conjunction with Article E and a violation of Article 12§4 of the Revised Charter.

AS TO THE ADMISSIBILITY CONDITIONS. PARTIES’ ARGUMENTS AND THE COMMITTEE’S ASSESSMENT:

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Ireland on 4 November 2000 and entered into force for this state on 1 January 2001, the complaint has been submitted in writing and concerns Articles 23 in conjunction with Article E and 12§4 of the Revised Charter, provisions accepted by Ireland when it ratified this treaty on 30 May 2002 and to which it is bound since the entry into force of this treaty in its respect on 1 July 2002.

3. Moreover, the grounds for the complaint are indicated.

4. The Committee notes that, in accordance with Articles 1 b) and 3 of the Protocol, the IFHR is an international non-governmental organisation with consultative status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints.

5. The complaint is signed by Mr Sidiki KABA who is President of the IFHR and represents it in all civil matters and is vested with all powers necessary for that purpose. The Committee therefore considers that the complaint complies with Rule 23 of the Rules.

6. The Government in its observations of 15 June, 2007, has raised several objections to the admissibility of the complaint. In response, the IFHR has contested all of those objections. The Committee addresses each of the points at issue in turn.

7. While recognising that the IFHR is included on the list of organisations established by the Governmental Committee pursuant to Article 1, item b, of the Protocol the Government argues that the IFHR does not have a recognised "particular competence" in respect of the rights of the elderly, the subject-matter of its complaint, such as is required under Article 3 of the Protocol for lodging a complaint.

8. The IFHR in response states that it is an organisation promoting the effective implementation of the principles laid down in major international human rights conventions and instruments, including the Revised Charter, which constitutes the particular competence required to lodge this complaint. It submits that for the purposes of the present complaint there is no need for a specialist expertise in relation to the care of the elderly.

9. The Committee notes that the IFHR is a general human rights organisation whose remit spans widely, including, i.a., the rights of the elderly. This being the case, the IFHR must be deemed to have "particular competence" within the meaning of Article 3 of the Protocol in the field to which the present complaint pertains.

10. The Government further argues that the complaint appears to be championing the rights of one particular individual in a manner that is incompatible with the objective of the collective complaints system. This is contested by the IFHR by reference to the complaint.

11. The Committee observes that it is abundantly clear from the complaint that it is of a general nature, addressing the application in general by Ireland of the Charter provisions concerned. Exemplifying issues at stake by way of individual cases in no way alters this.

12. Moreover, the Government argues that the complaint does not concern persons who fall within the personal scope of the Revised Charter, in that it addresses alleged rights of persons who are not lawfully resident or regularly working in Ireland. The Government also submits that in relation to Article 12§4 of the Revised Charter, the complaint does not relate to any right guaranteed by the Charter, as the scheme at issue is a non-contributory scheme falling outside the scope of Article 12§4. Lastly, the Government argues that the complaint is based on a manifestly erroneous misconception, i.e., that the Free Travel Scheme as it applies to people aged 66 or over constitutes a secondary benefit attaching to qualification for old age person in Ireland. The Government submits that on the contrary, it is not a social security scheme but rather a non-statutory, discretionary benefit which is not linked to pension rights.

13. The Committee notes that these arguments all pertain to the merits of the complaint. Without prejudice to its assessment of the merits the points concerned do not give rise to further consideration at the present stage. The same applies to the argument made by the Government that the Committee should have regard to the competence of the European Community in this matter.

14. For these reasons and on the basis of the report presented by Mr Stein EVJU, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the defending state of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 30 November 2007

Invites the IFHR to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 30 November 2007 should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 30 November 2007.

Stein EVJU
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary