

Social Welfare Rights and the European Social Charter

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‘Social Welfare Rights’

- Distinction between *social security* and *social assistance* (Articles 12/13 ESC).
- Distinction blurred in *non-contributory* systems like Ireland, but nevertheless remain important – *Bismarck v Beveridge*.
- Rights of ‘last resort’, or ‘social entitlement’?
- Individual rights or general entitlements?
- Context-dependant? Is ‘regression’ possible, even for example in the current economic climate?
- How should the interaction between discrimination and social welfare rights be conceptualised, e.g. in the gender context, or ethnicity?

Some Relevant International HR Standards

- **Article 9 ICESCR** – ‘The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.’
- **Article 11(1) ICESCR** – ‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...’
- **ILO standards** - Social Security (Minimum Standards) Convention, 1952 (No. 102); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); the Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128); the Medical Care and Sickness Benefits Convention, 1969 (No. 130); the Maintenance of Social Security Rights Convention, 1982 (No. 157); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and the Maternity Protection Convention, 2000 (No. 183).

European Instruments

- **European Code of Social Security** (Council of Europe) – standard-setting.
- **EU Social Security Directives** – focused on free movement.
- **EU Charter of Fundamental Rights** – assorted provisions, including Art 33 right of the family to social and legal protection (similar to ICESCR); but in particular, see Article 34 of the Charter on ‘Social Security and Social Assistance’:
 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
 2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.’
- **NB:** Note *limits* on the scope of the EU Charter – Arts. 51(1) (‘only Union law’); 51(2) (no extension of competency)

The ECHR

- Indirect protection of social welfare rights, via Articles 2 and 3 (*Limbuela*), Art. 8 (*Enfield, O'Donnell*), Art. 6, Art. 14 (*Stec v UK*).
- 'Minimum floor', plus procedural justice and non-discrimination.
- Potential remains untapped, but hemmed in by the Convention's civil-political focus.
- Similar situation in many national constitutions, including Ireland?

The European Social Charter

European Social Charter, signed in Turin on 18 October 1961 – socio-economic equivalent of the ECHR – supplemented by the 1988 Additional Protocol.

Protocol amending the European Social Charter, signed in Turin on 21 October 1991 - not in force yet since has not been ratified by all the Parties to the ESC, but implemented in general ('the Turin Protocol').

Additional Protocol to the European Social Charter Providing for a System of *Collective Complaints*, signed in Strasbourg on 9 November 1995 - in force since 1 July 1998

European Social Charter (revised), signed in Strasbourg on 3 May 1996 - in force since 1 July 1999 – Ireland has ratified this instrument, plus the 1995 Additional Protocol.

The General Categories of Rights Guaranteed by the Charter

- Housing
- Health
- Education
- Employment
- Art 12 – social security
- Art 13 – social assistance
- Legal and social protection
- Movement of persons
- Non-discrimination

The Charter Requirements

1. The ‘à la carte’ approach - see Article A of the Revised ESC, according to which each of the Parties undertakes:

1. to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

2. to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1 (right to work), 5 (freedom of association), 6 (collective bargaining), 7 (special protection of children in employment), 12 (right of workers to social security), 13 (social and medical assistance for persons without resources), 16 (protection of the family), 19 (protection of migrant workers) and 20 (non-discrimination in employment on grounds of sex);

3. to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles [out of a total of 31; under the 1961 ESC, 10 out of a total of 19] or sixty-three numbered paragraphs [out of a total of 97 paragraphs].

