

ICTU SUBMISSION TO THE BILL OF RIGHTS FORUM

'TRADE UNION RIGHTS AND THE PARTICULAR
CIRCUMSTANCES OF NORTHERN IRELAND'

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29.10.07

Introduction

A Bill of Rights which reflects the 'particular circumstances' of Northern Ireland implies a Bill of Rights that both deals with the legacy of the past and looks to a fair and inclusive future for all our citizens. The path to this future is a process in which all must be included and in which all have a role to play. Work is part of that process. We need a society in which all workers are free from discrimination, a society in which all can access opportunities and win for themselves good jobs at a fair remuneration, a society in which we can be both caring parents and productive workers. Of course, the details of each contract of employment and each work-life balance arrangement are not the responsibility of a Bill of Rights. These details are negotiated between employers and the representatives of workers. The Bill of Rights ensures that fairness, inclusivity and prosperity are everyone's, by ensuring that trade unions are in a position to represent those workers in the first place.

In Europe and across the globe trade union rights are central to functioning democracies;

societies which seek a healthy and well educated population, that seek to deliver high quality public services, that provide more and better jobs and who share a commitment to use prosperity to tackle disadvantage, all have strong and modernizing trade unions at their core. Workers who are in trade unions are better paid and better treated than those who are not. There are no exceptions, anywhere, to this rule. (Peter Bunting Assistant General Secretary – Irish Congress of Trade Unions¹)

¹ Comments at Bill of Rights Seminar, 1 Nov 2007

Strong trade unions stabilize democracies and create societies in which a commitment to fairness and inclusion is evidenced in practice. This is why trade union rights are a vital component in the Bill of Rights for Northern Ireland; the workplace is where equality and fairness are tested, it is where workers can secure for themselves the fairness and equal treatment that is promised by all sections of civil society, state and government. The Programme for Government announced by the Northern Ireland Executive last week made a commitment to the citizens of Northern Ireland, stating:

Working together we can build a better future for all...A prosperous, fair and inclusive society, which is at ease with itself and where everyone shares and enjoys the benefits of this new opportunity²

The Programme for Government concludes with the appeal;

While Government can provide the lead, it cannot however, address the challenges we face alone. All sectors, including business, the trade unions, academia, the voluntary and community sectors and individuals must play their part

As the largest representative body in civil society the Trade Union movement, representing the interests of over 250,000 workers in all communities and speaking for the interests of thousands of workers who are denied trade union rights, will continue to fulfill its role in ensuring that a fair and inclusive society is available to all our citizens, where we can all "share the benefits of this new opportunity".

² <<http://www.pfgbudgetni.gov.uk/pfg241007.pdf> > Accessed 27th October 2007

Guaranteeing the rights of workers through the Bill of Rights, guarantees that fairness and inclusion will be a permanent feature of Northern Ireland society; not to guarantee these rights is to undermine this commitment to fairness and to undermine the democratic process itself.

The Bill of Rights in an International Context

The constitutional arrangements in a majority of European states guarantee trade union rights³; taken alongside the emerging normative international framework which includes post conflict constitutions such as that of South Africa, reflects a fundamental shift about the functions of Bills of Rights. This normative shift shows that modern Bills of Rights must embrace a range of values wider than those to be found reflected in the US Constitution drafted at the end of the 18th Century. Modern thinking that reflects the values and realities of the 21st Century clearly sees a commitment to trade union rights as fundamental to a fair and inclusive society. Further, for these rights to meet minimum international core standards they must be an inclusive set of rights that not only recognise the rights of citizens to organise in the workplace to protect their interests but to do so in ways that guarantees real trade union freedom.

Trade Union rights are considered fundamental freedoms and are recognised in the United Nations Universal Declaration of

³ Greece, Italy, Portugal, Spain, Sweden, Finland, Germany, France, Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. (In the Netherlands the courts have applied the right to strike as guaranteed in the ESC as a result of a constitutional guarantee that international treaties are to be enforced in domestic law.)

Human Rights 1948, Article 23. 4 recognises the rights of workers to form and to join trade unions for the protection of their interests. In the United Nations Covenant on Economic, Social and Cultural Rights (ICESR) and the European Social Charter (ESC) comprehensive trade union rights are also enshrined. The ICESR entered into force on 3rd January 1976 and includes Article 8 which enshrines the right to form trade unions and the right to strike on which there are no restrictions except those necessary for national security, public order or protecting the rights of others. The right to strike was incorporated by the third committee as it was felt that trade union rights generally were meaningless without the right to withdraw labour⁴. The committee suggested that the right to strike should be incorporated as part of the contract of employment and that being on strike constitutes a suspension of the contract of employment not a break. Article 8 can be regarded as an extension of the right to Freedom of Association so overlaps with the ICCPR Article 22 which enshrines the right to freedom of association with others, including the right to form and join trade unions. The terminology of the Article is reminiscent of the obligations within civil and political rights in that the wording of the article emphasises that the rights need to be given immediate effect (in amending the protocols of 1991 and 1995); the UK is a signatory to the Covenant.

The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) states in Article 11 the right to

⁴ Mosorov (USSR) E/CN.4/SR.298 at p. 8 (1952); Braco (Uruguay) E/CN.4/SR.229 at 3 (1952); Brena (Uruguay) A/C.3/SR.719

Freedom of assembly and association⁵. Further the European Social Charter (1961) guarantees social and economic human rights⁶ and includes in Articles 5, 6 and 6.4 respectively, the right to organise, the right to bargain collectively and the right to strike⁷.

Support for fundamental trade union rights is also to be found in the pronouncements of the International Labour Organisation; the ILO Conference has issued two resolutions emphasising the right to strike. The 'Resolution Concerning the Abolition of Anti-Trade Union Legislation in the States Members of the ILO 1957' stated that states should adopt laws to ensure the effective and unrestricted exercised of trade union rights, including the right to strike⁸. The 'Resolution concerning Trade Union Rights and their Relating to Civil Liberties 1970' called for further action to ensure respect for trade union rights with particular attention to be given to the right to strike⁹. Further to these resolutions the two bodies established to supervise the application of ILO standards, the Committee on Freedom of Association (established 1952)¹⁰ and the Committee of Experts on the Application of Conventions and Recommendations (established 1959), have

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (CPRH) (ETS No.005) of 4 November 1950.

Article 11: Freedom of assembly and association.

⁶ It was revised with further rights in the Revised Social Charter of 1996 to which the UK is not a party

⁷ See also Assemblée parlementaire, Resolution 1442 (2005) of 6 June 2005, The right to strike in essential services: economic implications

⁸ ILO Law on Freedom of Association Standards and Procedures, Geneva, ILO 1995: 111

⁹ *ibid*

¹⁰ ILO: Freedom of Association and collective bargaining , a general survey of Conventions No. 87 and No. 98, (ILO 1994a)

explicitly stated that the right to strike is a fundamental right¹¹
12 .

Regardless of these international minimum standards the New Labour government maintains its resistance to enshrining these rights in domestic legislation. The UK Human Rights Act 1998 Article 11 states:

everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of interests

Significantly however it does not protect the right to strike and in *UNISON v UK*¹³ the court found:

There is no express inclusion of a right to strike or an obligation on employees to engage in collective bargaining. At most Article 11 may be regarded as safeguarding the freedom of trade unions to protect the occupational interests of their members.

Recognising the rights of trade unions to organise to protect their members whilst circumscribing their actual freedoms to provide that protection undermines the right itself. The European Committee on Social Rights in its most recent report on the UK in 2005 found that:

¹¹ ILO: Freedom of Association, Digest of Decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (ILO 1996d)

¹² See also detail of Convention No. 98 of the ILO, of 1 July 1949, concerning the Application of the Principles of the Right to Organize and to Bargain Collectively. Convention No. 135 of the ILO, of 23 June 1971, concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

Convention No. 154 of the ILO, of 19 June 1981, concerning the Promotion of Collective Bargaining.

Declaration of (ILO) on fundamental principles and rights at work, of 19 June 1998.

¹³ 10 January 2002, 53574/99

1. The scope for workers to defend their interests through lawful action is excessively circumscribed.
2. The requirement to give notice to an employer on a ballot on industrial action is excessive.
3. The protection of workers against dismissal when taking industrial action is insufficient¹⁴.

Whilst there have been some minimal improvements in terms of Trade Union rights such as the statutory recognition procedures under New Labour since 1997, the anti-democratic changes of the 1980's are still largely intact and significant work is yet to be done to bring the UK into full adherence with minimum core international standards which we have outlined below:

1. The right to organise
 - i. The right of trade unions to freely establish their own constitutions, rules and elect their own representatives.
 - ii. The right of trade unions to freely organise their administration, activities and programmes, including political activity

¹⁴ <http://www.coe.int/t/e/human_rights/esc/5_survey_by_country/UK_en.pdf> accessed 17th September 2007

2. The right to collective bargaining

- i. The right of trade unions to engage in collective bargaining on behalf of their members and others.
- ii. The right of trade unions to engage in collective bargaining in all workplaces and in all matters relating to employment.

3. The right to strike

- i. The right of trade unions to organise industrial action in defence of their social and economic interests.
- ii. The right of trade unions to organise industrial action in solidarity with other workers.

We have a historic opportunity in Northern Ireland to lead the way, to be a society in which social justice and equality sit alongside prosperity and innovation. The Bill of Rights for Northern Ireland cannot be allowed to emerge as a weak and ineffectual covenant that demeans and insults the people of Northern Ireland by denying them their fundamental rights as the world looks on. No party to the Bill of Rights process should have the right to define alone, what is and what isn't a fundamental right of the citizens of Northern Ireland. If a Bill of Rights emerges without the inclusion of these fundamental trade union rights who will tell the working people of Northern Ireland that they must remain second class bearers of minimal rights in a modern Europe?

Northern Ireland and its people want the normality of a modern, fair, inclusive and prosperous Europe:

The rights its working people seek are consistent with the European social model and are the true heirs of the ideas of the Scots and Irish thinkers that first inspired these historic charters for human freedom. (Peter Bunting Assistant General Secretary – Irish Congress of Trade Unions)

Conclusion

The creation of a Bill of Rights for Northern Ireland offers a unique chance to ensure that these fundamental trade union rights are enshrined within this historic covenant. A Bill of Rights ensures that the fundamental rights and freedoms of everyone living in Northern Ireland are protected by law. An inclusive Bill of Rights will act as an effective set of checks and balances on state power and removes our fundamental human rights from interference from short term party political positioning. Restrictions on fundamental trade union rights, such as the right to freedom of association, the right to collective bargaining and the right to strike undermines the balance of labour relations and removes a significant means for citizens to ensure their own social and economic security. Only by supporting these fundamental rights can we help to ensure the realisation of our social and economic rights and by extension strengthen the democratic process. Not to enshrine these fundamental trade union rights and particularly the right to strike, is to undermine the peace and to place economic security and an adequate standard of living beyond the reach of our citizens.

The Declaration of Philadelphia, adopted in 1944 as the charter of the International Labour Organization states that:

All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity (Fundamental Principles: II)

It is only with the freedom to organise, to bargain collectively and to withdraw labour that workers can guarantee these freedoms and secure their economic security. These rights underpin democracy and sustain the meaning of an open and free society. A worker's right to organise, to bargain collectively and to strike are basic human rights and distinguish the free worker from the slave. These rights are fundamental freedoms and must be enshrined in the Bill of Rights for Northern Ireland.