

2022 **NGO**

ENGAGEMENT GUIDE SERIES

Guide to Individual
Non-court Complaint
Mechanisms at
European Level





This project is a cross-border collaborative effort between law firms and NGO partners to develop guidelines on recourses to action for the NGO community in the areas of UN and EU mechanisms, judicial review and the appointment of an *amicus curiae*.

The pathways to justice described in these guides are all too often overlooked or misunderstood due to the overwhelming amount of complex or academic information on these mechanisms. These guidelines steer our NGO partners through easily accessible resources on the different avenues to accessing justice.

The Free Legal Advice Centre (FLAC), The Public Interest Law Alliance (PILA), a project of FLAC based in Dublin, and The Public Interest Litigation Support (PILS) Project in Belfast identified a need in the NGO community for better information and resources on legal recourses to action in the following areas:

1. Individual non-court mechanisms at European level
2. Engagement with UN Special Procedures mandate holders
3. Taking individual complaints to UN treaty bodies
4. *Amicus curiae* procedure
5. Judicial Review

To address this need, PILA, The PILS Project and Arthur Cox offices in Belfast and Dublin collaborated to develop and finalise guideline documents in each of the target areas. The guides were written or revised by the Arthur Cox offices on a *pro bono* basis and were peer reviewed by colleagues from the legal sector in the North and South.

The aim of this project is to provide NGOs with the information they need to understand the available recourses to action and to determine which (if any) to pursue. Should an NGO decide to explore a recourse to action further, the NGO may contact PILA or The PILS Project for assistance through the respective *pro bono* referral schemes.

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Information sources and useful websites are hyperlinked throughout this guide. Updated links to the NGO Engagement Guides are available on the Public Interest Law Alliance website (www.pila.ie) and the PILS Project (www.pilsni.org) website.

Introduction

There are various European organisations to complain to if your legal rights have not been respected. While the European Court of Justice in Luxembourg and European Court of Human Rights in Strasbourg may be the most famous, not all complaints are best dealt with in the Courts. There are a variety of European non-Court mechanisms which can be used as alternatives to Court proceedings and which may be quicker, cheaper and sometimes more focussed on individuals.

This guide provides an overview of the complaints mechanisms available through the European Commission, European Parliament, European Ombudsman, European Data Protection Supervisor and the European Committee of Social Rights.

It is important to note at this introductory stage that Post-Brexit, British citizens living in Northern Ireland cannot avail of the complaints mechanisms made available by European Union entities. Citizens of EU Member States living in the United Kingdom and its overseas territories can continue to avail of these mechanisms. Equally, citizens of other EU Member States other than Ireland living in the United Kingdom can continue to avail of these mechanisms. However, the question of whether a complaint can be made arising from a law or practice of the United Kingdom would depend on whether such law or practice falls within the scope of the arrangements governing its withdrawal from the European Union as set out in the Agreement and associated protocols and which can be found on the EU law website.



The European Commission

The European Commission is one of the key institutions of the EU. One of its primary responsibilities is to ensure that EU laws are complied with. This includes ensuring that Member States respect the rights given to all individuals who are nationals of EU Member States.

Who can make a complaint to the Commission?

Any person (i.e. individual or organisation) can make a complaint to the Commission. Representatives may also submit complaints on another's behalf.

You do not have to show a formal interest in making a complaint, or that you are directly affected by the subject matter of the complaint.

What kind of complaints does the Commission deal with?

The Commission can investigate a complaint that any national public body (e.g., local councils, government agencies, national Courts) has breached EU law in any way.

Provided relevant EU law rights or obligations can be identified, there is a broad range of actions that can be the subject of the complaint – generally, any measure, absence of measure or practice that you consider to be against EU law. For example, the introduction of national laws which are not consistent with EU law, a failure to introduce national laws needed to implement EU law, a decision of a local council or government body which incorrectly applies EU law or a misinterpretation of EU law by a Court.

If you are unsure about whether an issue involves EU law rights or obligations, helpful guidance is available through the EU's "Your Europe Advice" website (<https://europa.eu/youreurope/index.htm#en>).

The Commission cannot investigate complaints made against entirely private individuals or organisations (i.e., where there has been no involvement of a public body) or which do not involve any issue of EU law. The Commission also decided in 2017 that it would no longer investigate complaints made in relation to the gambling sector.

The Commission's complaint procedure is designed to prevent future breaches of EU law rather than to compensate you for any existing breach. As a result, the procedure is not appropriate for cases where you are seeking compensation or to have an individual action withdrawn or decision overturned. This can only be

achieved through bringing a case in the national Courts. Submitting a complaint to the Commission will not prevent any time limits that might apply to bringing such a Court action from running.

How do I submit a complaint?

You can submit a complaint free of charge through:

1. the European Commission's website (https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/);
2. email (to sg-plaintes@ec.europa.eu);
3. fax (to 3222964335); or
4. post (addressed to European Commission, Secretary-General, B-1049 Brussels, Belgium or, for Irish complaints, European Commission Representation in Ireland, Europe House, 12-14 Lower Mount Street, Dublin 2).

Where the complaint is not submitted through the European Commission's website, it must still be made on the European Commission's standard form (available to download at https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law/how-make-complaint-eu-level_en) and in one of the EU's official languages.

When filling out the complaint form, you should be careful to describe: (a) exactly how you believe that the national public authority has breached EU law; and (b) any steps you have already taken to solve the issue. There is no need to provide supporting evidence at this stage, but, if you do have any (e.g., letters from local authorities, judgments from national Courts) you should refer to this.

What happens next?

You may give the Commission additional material about your complaint or ask to meet representatives of the Commission at any time.

Assuming that all submission requirements are met, within 15 working days, the Commission will confirm to you that it has registered your complaint. This confirmation will provide a registration number, which you should quote in any further correspondence with the Commission. Where not all submission requirements have been met, the Commission will also contact you – this time to confirm that it could not register your complaint.

Within a period of 12 months, the Commission will assess your complaint and aim to decide whether to start proceedings against the relevant Member State for breaching EU law. If your complaint is particularly complicated or the Commission needs to ask you or others for more information, the Commission may need to take longer to decide and, if so, they will let you know.

Even where the Commission decides that there has been a breach of EU law, it is not obliged to start proceedings. Instead, it may:

1. Direct you to informal problem-solving services such as Solvit (https://ec.europa.eu/solvit/what-is-solvit/index_en.htm) or national mechanisms. The Commission is more inclined to take this approach where the complaint appears to relate to an isolated incident;
2. Start informal discussions with the relevant Member State to resolve the breach. The Commission will not disclose your identity unless you have given it your express permission to do so; or
3. Start formal proceedings in the Court of Justice against the relevant Member State and keep you updated as the case progresses. While formal proceedings may take several years, if the Commission wins the case, the Member State will have to remedy the breach of EU law going forward. However, the Court of Justice cannot order national authorities to withdraw or amend individual decisions, to respond to individual requests or to pay compensation. If you are aiming to obtain any of these things, you should consider recourse to the national Courts.

If the Commission decides that there has not been a breach of EU law, it will inform you by letter (setting out its reasons) and invite you to submit any comments within 4 weeks. If you do not reply or your observations do not persuade the Commission to reconsider, the case will be closed and you will be informed in writing. If your observations persuade the Commission to reconsider, the investigation will continue and you will be notified.

You cannot appeal the Commission's final decision. However, if you feel that there has been some maladministration in the handling of your complaint, you can make a separate complaint about this to the European Ombudsman (see below for guidance on this).

The European Parliament

Members of the European Parliament are directly elected by citizens of Member States. Their main role is to make EU law. However, they also have the power to investigate violations of EU law by Member States and to take formal positions on matters within the scope of EU law.

Who can make a complaint to the European Parliament?

Any individual resident in the EU (whether or not they are also a citizen of a Member State) or any company/organisation with its registered office in the EU may make a complaint to the European Parliament. This is called “submitting a petition.”

For the avoidance of doubt, citizens of a Member State living in Northern Ireland can submit petitions to the European Parliament despite the United Kingdom leaving the European Union.

You need to show that the subject of your complaint (or petition) relates to an area of EU law and that it directly affects you.

What kind of petitions does the European Parliament deal with?

The European Parliament can investigate any complaint that a Member State has breached EU law in any way.

You can also request that the European Parliament formally adopt a position or review the existing law on a particular matter that comes within the scope of EU law and directly affects you. For example, you can ask that the European Parliament take a formal position on matters of public interest, such as human rights.

The European Parliament has given the following areas as examples of where a petition may be appropriate:

1. environmental matters;
2. consumer protection;
3. free movement of persons, goods and services, internal market;
4. employment issues and social policy;
5. recognition of professional qualifications; or
6. any problem relating to the implementation of EU law.

Like the Commission, the European Parliament cannot overturn individual decisions or order the payment of compensation – these are matters for national proceedings. Further, the European Parliament cannot investigate complaints against European bodies (for example, the Commission) – these should be addressed to the European Ombudsman (see below).

How do I submit a petition?

You can submit a petition free of charge through:

1. the European Parliament's website (<https://www.europarl.europa.eu/petitions/en/home>); or
2. post (addressed to European Parliament, Chair of the Committee on Petitions c/o PETI Secretariat, Rue Wiertz 60, 1047 Brussels, Belgium).

There is no compulsory standard form. However, petitions must:

1. Be written clearly, legibly and comprehensively, including all relevant facts but omitting unnecessary detail. If you think it helpful, you can accompany your petition with a summary;
2. Include your name, nationality and permanent address. Where the petition is being submitted by a group, it must at a minimum contain the name, nationality and permanent address of the first signatory or, if different, the person designated as representative for the group;
3. Not include any offensive or obscene language;
4. In most cases, be written in an official language of the EU; and
5. Be signed by the person(s) submitting it.

Your petition may also include attachments, including any supporting documents you may have. Alternatively, attachments (or further attachments) can be added to the petition at a later stage.

Even if you feel strongly about a particular issue, it may not be necessary for you to submit your own petition. Your views may be sufficiently expressed by an existing petition, which can be searched on the European Parliament's website (<https://www.europarl.europa.eu/petitions/en/show-petitions>). If you find an existing petition that interests you, you can choose to "support" it. The European Parliament states that the level of support for any given petition does not affect its decision-making. However, supporting a petition does entitle you to receive notifications about any further developments on the petition. You may withdraw your support for as long as a petition remains open. However, if you withdraw your support to a petition you will not be able to support it again.

What happens next?

After submission, you can refer questions on your petition to the Secretariat of the Committee on Petitions (the committee within the European Parliament responsible for assessing and responding to petitions) by email to peti-secretariat@europarl.europa.eu or by fax to +32 2 2846844. You can also withdraw your petition at any time, although, where a petition was signed by multiple parties, it will only be withdrawn where all signatories withdraw.

As a first step, your petition will be added to the European Parliament's register of petitions, assigned a petition number and forwarded to the Secretariat. The European Parliament should also write to you at this stage to confirm receipt.

Once registered, petitions become public documents and may be published by the European Parliament. If you would like your name not to be made public, you must specify this in your petition.

The Secretariat then reviews your petition and prepares a summary and recommendations on next steps for the Committee. During this stage, the Secretariat may contact you to request additional information.

Having received the Secretariat's summary and recommendations, the Committee will then decide whether your petition meets all of the requirements on substance and format (as set out above). If it does not, the Committee will write to let you know this, but will not consider your petition any further. If it does, your petition will be deemed "admissible" and will be considered further by the Committee. At this stage, a summary of your petition will also be added to the public registry on the European Parliament's website and made available for others to "support" it.

Even where it has deemed a petition "admissible," the Committee retains a broad discretion on what, if any, further steps should be taken.

Most petitions are dealt with through a written process. However, the Committee has a discretion to discuss petitions during in-person meetings. It will usually only do this where it considers a petition to be of general interest or that publicity may assist in resolving matters raised in a petition. Such meetings are public and you may be invited to attend and, potentially, speak when your petition is discussed.

After considering your petition, Committee may:

1. decide that your petition has been sufficiently discussed and that no further action is necessary/possible;
2. ask the European Commission to carry out a preliminary investigation and to consider whether any EU law has been breached;
3. refer your petition to other committees within the European Parliament for information or further action (a committee might, for example, take account of a petition when proposing new law);

4. in exceptional cases, prepare and submit a full report to be voted on by the full European Parliament. This may contain, for example, recommendations for changes to existing law or for public statements of support/criticism to be published on the European Parliament's website;
5. in exceptional cases, conduct a fact-finding visit to the area concerned and issue a report containing its observations and recommendations. This may include recommendations of enforcement action against the relevant Member State for any breaches of EU law found; or
6. take any other action considered appropriate to deliver a suitable response to your petition.

Whatever is decided, the Committee will inform you in writing of its decision (and its reasons) as soon as possible.

You cannot appeal the Committee's final decision. If, however, new information strengthening your case later emerges, you may submit this and the Committee may consider re-opening your petition.



The European Ombudsman

The European Ombudsman is the body that investigates complaints of wrongdoing or maladministration by EU institutions (e.g., the European Commission, European Parliament), bodies (e.g., European Data Protection Board, European Investment Bank), or agencies (e.g., European Asylum Support Office, European Agency for Health and Safety at Work).

Who can make a complaint to the Ombudsman?

Any individual resident in the EU (whether or not they are also a citizen of a Member State) or any company/organisation with its registered office in the EU may make a complaint to the Ombudsman.

You do not have to show that you are directly affected by the subject matter of the complaint.

What kind of complaints does the Ombudsman deal with?

The Ombudsman investigates complaints of "maladministration" by EU institutions etc.

"Maladministration" is a very broad term and includes any failure by any EU body to respect fundamental human rights, legal rules or principles, or general principles of good administration. In short, it covers any case where an EU entity fails to do something it should have done, carries out its activities in the wrong way or does something that it should not have done. For example, "maladministration" can include administrative irregularities, unfairness, discrimination, the abuse of power, failures to reply, or the refusal or unnecessary delay in granting access to information in the public interest.

A complaint must be made within two years of when the person affected became aware of the relevant facts. The complainant must also have first contacted the body against whom the complaint is being made to try to resolve the matter directly before making a complaint to the Ombudsman.

One of the main advantages of the Ombudsman is that, unlike other EU bodies (for example, the European Commission or European Parliament), it can attempt to remedy the position of the individual complainant.

The Ombudsman cannot investigate complaints against national, regional or local administrations in the Member States (even when the complaints are about EU matters), complaints against judicial decisions of the General Court or Court of Justice of the EU or matters that are subject to legal proceedings. However, if the Ombudsman is unable to assist, it will usually try to direct you to an alternative organisation that can.

If you are in doubt as to whether your complaint is appropriate for the Ombudsman, its website has a helpful complaints checklist (<https://www.ombudsman.europa.eu/en/checklist-for-making-a-complaint#z0suEZ0XeY12>).

How do I make a complaint?

You can submit a complaint free of charge through:

1. the European Ombudsman's website (<https://www.ombudsman.europa.eu/en/make-a-complaint>); or
2. post (addressed to Médiateur européen, 1 avenue du Président Robert Schuman, CS 30403, F-67001 Strasbourg Cedex).

Whilst it is not compulsory, a short standard complaint form is available for download through the Ombudsman's website (<https://www.ombudsman.europa.eu/en/make-a-complaint>). Complaints can be made in any official EU language.

Whether you submit it online or via post, the complaint should be accompanied by all of the evidence which is available to support it.

What happens next?

The Ombudsman aims to acknowledge receipt of complaints within one week of submission.

Upon receipt, the Ombudsman shall confirm whether your complaint satisfies all of the requirements for investigation and whether it considers the complaint to be an appropriate subject for an inquiry and whether sufficient information has been provided. It aims to reach a decision on whether to open an enquiry into your complaint within one month and will update you of its decision in writing. Before making its decision, it may contact you to ask for further information or documents.

Assuming that it decides to open an enquiry, the Ombudsman can then ask the relevant EU institution etc. to reply to the complaint and/or provide information/documentation, arrange a meeting with and/or carry out an inspection of the relevant EU entity to take witness evidence from relevant staff and commission any studies or expert reports that it considers necessary. The Ombudsman may also contact you for more information, documentation or explanation or to request a meeting. The Ombudsman aims to conclude its inquiries within one year.

The Ombudsman may discontinue its inquiry at your request or where you fail to provide requested information or comments, but this shall not prevent it from then opening an inquiry of its own initiative into the subject matter of the complaint.

Where the Ombudsman finds no maladministration, it will write to you and the relevant EU entity setting out its findings and reasons. Where maladministration is found, the Ombudsman may:

1. Suggest a 'friendly' solution that both you and the relevant EU entity may be content with. This is generally used in more straightforward cases. Unlike the European Commission or European Parliament, the Ombudsman can make suggestions regarding remedies such as the payment of compensation;
2. Make formal recommendations to address the maladministration. This is generally used in more complex cases. The relevant EU entity will be given 3 months to give an opinion on the recommendations, including whether and, if so, how it has implemented or intends to implement them. Once that opinion is received, the Ombudsman will send you a copy of its formal recommendations and the opinion and you will have 1 month to provide any comments. Following the feedback process, the Ombudsman will produce a final decision, setting out its final recommendations. Again, while the final decision may also make wider recommendations, the Ombudsman can seek to directly remedy your individual case; or
3. In exceptional circumstances, the European Ombudsman may make a special report to the European Parliament. Unlike those above, this option is more focused on bringing about wide-ranging changes to prevent maladministration going forward, as opposed to resolving your individual complaint.

Details of inquiries opened, solutions suggested, recommendations made and final decisions are also publicly available on the Ombudsman's website (<https://www.ombudsman.europa.eu/en/search-inquiries>). The Ombudsman reports the findings of its inquiries regularly to the European Parliament both on an ad hoc basis and in its annual report.

The Ombudsman does not have any coercive powers to enforce its recommendations. However, it does wield significant political power and so, the rate of compliance with the Ombudsman's recommendations is consistently high. Given its broad definition, it is important to note that a finding of 'maladministration' by the Ombudsman does not mean that any illegal behaviour has occurred that would be sanctioned by a Court.

There is no external mechanism to appeal decisions of the Ombudsman. However, it is possible to request that the Ombudsman review its decisions. Detailed guidance on the relevant process for this will be contained in any decision received.



Case Study: CAJ – Ombudsman - BREXIT

In 2018, Belfast-based human rights NGO The Committee on the Administration of Justice (CAJ) was concerned that Irish citizens in Northern Ireland could be stripped of certain EU citizens' rights after Brexit. (This related to the European Commission not taking forward commitments made in the EU-UK 2017 Joint Report regarding arrangements to ensure ongoing access to such EU rights.)

Along with three people directly affected by the issue, [CAJ lodged a formal complaint](#) with the European Ombudsman on 20 September. This followed an earlier letter, sent by CAJ, to the European Commission President (at the time, Jean-Claude Juncker).

In October 2018, the European Ombudsman turned down CAJ's complaint.



The CAJ complaint is an interesting example. Firstly, because it illustrates the European Ombudsman's remit and the process described in this guide. Also, this case demonstrates how a negative decision (initially) can still have a positive outcome.

As this guide explains, the Ombudsman can investigate allegations of maladministration by EU institutions, bodies and agencies. It cannot examine complaints that involve national administrations in any of the EU's member state. Because the Ombudsman believed that CAJ had raised concerns about an ongoing political process between the EU and an individual member state, the complaint fell outside the office's remit.

In her letter to the NGO outlining the reasons for her decision, Ombudsman Emily O'Reilly gave an additional reassurance to CAJ. She wrote: "...I understand and have great sympathy with the concerns of EU citizens in Northern Ireland regarding the possible consequences for them of the withdrawal of the United Kingdom from the EU...". This led to media coverage which drew attention to the overlooked rights and equality questions posed by Brexit, as opposed to the well-publicised economic impact.

The European Data Protection Supervisor (the “EDPS”)

The EDPS is the body that supervises EU institutions, bodies, offices and agencies (EU entities) when they “process” (i.e., make any use of, such as through collecting, recording, organising, storing or transmitting) the personal data of EU citizens to ensure that EU laws on data protection are respected. If you think that an EU entity has breached relevant data protection laws when processing your data (or, if you are an employee of an EU entity that you believe has breached someone else’s data), you can complain to the EDPS and it will investigate on your behalf.

Who can make a complaint to the EDPS?

Anyone whose personal data is processed by an EU entity can make a complaint to the EDPS about how their data is processed. Individuals can also designate a not-for-profit body, organisation or association which is founded within the EU, has statutory objectives which are in the public interest and is active in the field of data protection to lodge a complaint on their behalf.

Anyone employed by an EU entity can also complain to the EDPS about any breaches of data protection law made by that EU entity, even if they are not personally affected.

What kind of complaints does the EDPS deal with?

The EDPS can investigate complaints from individuals that EU Entities have processed personal data in a way which breaches EU law on data protection. If you are unsure of your rights to data protection under EU law, helpful guidance is available through the EDPS’s website (https://edps.europa.eu/data-protection/data-protection_en). Examples of your rights include the right to only have your personal data processed for specific lawful reasons, the right to access the personal data that has been collected about you and the right to have your personal data appropriately secured.

Generally, you must first attempt to resolve any issues with the EU entity itself or the individual data protection officer for that EU entity (details of data protection officers are available through the EDPS’s website at https://edps.europa.eu/data-protection/eu-institutions-dpo/network-dpos_en). However, complaints must be lodged within 2 years of the date when the complainant became aware of the relevant facts.

The EDPS cannot investigate complaints against national, regional or local public authorities, private companies or organisations (including not-for-profit organisations) or against the Court of Justice where it is carrying out judicial activities.

Also, the EDPS cannot handle complaints aimed at modifying the content of documents, challenging or annulling decisions made by EU entities or obtaining compensation. If you are seeking these sorts of remedies, proceedings before national or the EU Courts may be more appropriate.

How do I make a complaint?

You can submit a complaint free of charge by completing a standard form on the EDPS's website (available at https://edps.europa.eu/data-protection/our-role-supervisor/eu-institution-body-or-agency_en). Where you have supporting evidence, this should be uploaded as part of the form.

What happens next?

Upon receipt, the EDPS will review complaints to confirm that they fall within its remit.

Assuming that all requirements are met, the EDPS will investigate the complaint, using its investigatory powers including the power to require the relevant EU Entity to respond to the complaint and provide information. Any personal data processed by the EDPS during its investigation will be handled in confidence and not shared with others unless necessary for the investigation e.g. in order to obtain the response of the relevant EU entity on the alleged breaches.

The EDPS will keep you updated of the progress of its investigation and of any outcome of your complaint (including whether you could be entitled to compensation for a breach of data protection law if you bring proceedings before the Court of Justice). Where you do not hear of any progress or outcome for a 3-month period, the EDPS advises that you can assume that it has decided that there was no breach of EU data protection laws.

Where the EDPS decides that there has been a breach of EU data protection laws, it will usually first attempt to find a 'friendly' solution that satisfies both you and the EU Entity involved.

Should no "friendly" solution be possible, however, the EDPS then has wide formal enforcement powers, such as the ability to order the EU Entity to comply with its EU data protection obligations or impose a ban on that EU Entity processing personal data.

If the EU Entity does not comply with the EDPS's orders or recommendations, it can refer the matter to the Court of Justice and, in some circumstances, issue administrative fines to the EU Entity. Although a breach of EU data protection can give rise to a right to compensation for the individual involved, the EDPS cannot order such compensation directly – instead, you would need to start proceedings before the Court of Justice.

Should you be dissatisfied with a decision of the EDPS, it can be appealed to the Court of Justice.

The European Committee of Social Rights (the “ECSR”)

The ECSR is a committee run by the Council of Europe. The Council of Europe is an international organisation which was founded after the Second World War to uphold human rights, democracy and the rule of law in Europe. The Council of Europe is an international organisation in its own right and it, and the ECSR, are separate from the EU although the European Social Charter is sometimes referred to, and used as a reference point, in EU law.

The ECSR monitors compliance with the Council of Europe’s European Social Charter, a treaty which guarantees fundamental social and economic rights to residents of Europe and to which 43 European countries (including Ireland) are parties. One way in which the ECSR conducts such monitoring is through a collective complaints procedure.

Who can make a complaint to the ECSR?

Individuals cannot complain directly to the ECSR. Instead, complaints can only be made by:

- the European Trade Union Confederation (for employees);
- Business Europe and International Organisation of Employers (for employers);
- employers’ organisations or trade unions in the country to which the complaint relates; or
- one of the Council of Europe’s current participating international non-governmental organisations (“INGOs”) (details of which can be found at <http://coe-ngo.org/#/ingos>).

In addition, any State may grant representative national non-governmental organisations (NGOs) within its jurisdiction the right to lodge complaints against it. So far only Finland has done so.

This means that where you feel that rights granted under the Charter have been breached, you will have to convince one of these organisations to refer a complaint to the ECSR on your behalf.

Although none of the current INGOs are based in Ireland, this does not necessarily mean that they will not refer issues relating to Ireland to the ECSR. For example, the European Roma Rights Centre (based in Hungary) and International Federation for

Human Rights (based in France) have both previously brought complaints against Irish law and practice to the ECSR. Similarly, none of the current INGOs are based in Northern Ireland. However, several INGOs are based in Great Britain. For example, Amnesty International is a founding member of Accountable Now, formerly known as INGO Accountability Charter and as such, it is entitled to make complaints.

What kind of complaints does the ECSR deal with?

The ECSR can investigate complaints that certain States' laws or practices do not comply with the provisions of the Charter (which provides various rights to individuals including to safe and healthy work conditions, to collective bargaining, to benefit from social welfare services, to protection against poverty and social exclusion and to housing). Full details of the rights provided under the Charter are available at [The European Social Charter \(coe.int\)](http://The European Social Charter (coe.int))

The ECSR can only investigate complaints against the States that have agreed to be subject to the collective complaints procedure. At present, this includes Ireland as well as Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden.

It should be stated that due to the fact that the United Kingdom has not signed up to the collective complaints procedure, the ECSR cannot investigate complaints relating to Northern Ireland.

Complaints must relate to non-compliance of a State's law with the Charter, or to a general practice by the State which breaches the rights under the Charter. Individual situations or circumstances cannot be investigated by the ECSR.

A complaint (via an INGO etc.) can be submitted without the requirement for domestic remedies to have been exhausted beforehand. Also, you and/or the complaining organisation do not have to be victims of the breach of the Charter right(s) in respect of which the complaint is made.

How do I make a complaint?

As set out above, you cannot complain directly to the ECSR. You will need one of the organisations listed to make a complaint on your behalf. This means you will need to contact the organisation that is connected to your issue and supply it with the information needed to make a complaint bearing in mind that the type of complaint suitable for recourse to this mechanism is one that is collective in nature.

Complaints must be addressed to the Executive Secretary of the European Committee of Social Rights acting on behalf of the Secretary General of the Council of Europe and may be submitted:

1. By post to Department of the European Social Charter, Directorate General Human Rights and Rule of Law Council of Europe, F-67075 Strasbourg Cedex;

or

2. By email to social.charter@coe.int

Complaints must also:

1. clearly indicate the name and contact details of the organisation submitting the complaint;
2. be signed by a person entitled to represent the organisation submitting the complaint and provide proof that this person is so entitled;
3. provide proof that the organisation submitting the complaint is entitled to do so (e.g., if an INGO is submitting the complaint, it must show that it has particular competence in the field to which the complaint relates. If a national trade union or employers' association is submitting the complaint, it must show that it is sufficiently large to be considered representative of thought in the field);
4. be lodged against a State which is a party to the Charter and which has agreed to be subject to the collective complaints procedure;
5. concern one or more provisions of the Charter which the relevant State has agreed to be bound by;
6. indicate the extent to which the relevant State has failed to respect the Charter. In particular, the organisation submitting the complaint must indicate how the relevant State has failed to comply with the Charter and provide supporting documents; and
7. if the organisation submitting the complaint considers that immediate measures are required to avoid the risk of serious damage and to ensure effective respect for the rights recognised in the Charter, provide details of the measures requested, the reason for the request and the possible consequences if the request is not granted.

When lodged by international bodies, complaints must be drafted in one of the Council of Europe's official languages (English or French). Complaints lodged by national organisations may be drafted in the official language, or one of the official languages, of the State against whom the complaint is being made.

What happens next?

Following submission, the ECSR will acknowledge receipt of the complaint and publish it on the Council of Europe's website (at <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure>).

As a first step, the ECSR will determine whether the complaint meets all requirements to be investigated. It may seek information and observations on

this issue from the State against which the complaint has been made and/or the complaining organisation.

The fact that a complaint relates to a law or practice which has been investigated previously does not necessarily mean that the new complaint will be rejected. The ECSR recognises that the submission of new evidence may prompt it to re-assess and, potentially, make decisions which differ from those previously adopted.

The relevant State and complaining organisation will be notified as to the ECSR's decision on whether the complaint can be investigated. This decision will also be published on the Council of Europe's website (at <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure>).

Assuming that it decides to investigate the complaint, the ECSR will ask the relevant State to provide written submissions within a defined period. Once received, the ECSR will forward these to the complaining organisation and ask that it provide any response within a defined time. Following receipt of the organisation's response, the ECSR may invite the relevant State to submit a further response.

Aside from the complaining organisation and the relevant State, the ECSR may invite and/or receive comments from a wide range of parties, including other States who are party to the Charter who have agreed to be subject to the collective complaints procedure or international trade unions and employer organisations. Where any such third party comments are received, the ECSR will pass them on to the relevant State and complaining organisation and invite them to make additional submissions in response.

Written submissions, responses and observations delivered during this written process are published on the Council of Europe's website.

When they consider it appropriate, the President of the ECSR will close the written procedure in respect of the complaint. From this point, the parties may only submit further documents with good reason.

Following the closure of the written procedure, the ECSR may organise a hearing either at the request of one of the parties or of its own initiative. Generally, these hearings will be public and, in addition to the relevant State and complaining organisation, any States or organisations which have made third party submissions are invited to take part.

Once the written procedure has been closed and, if relevant, hearings have been held, the ECSR will provide the relevant State, all other State parties to the Charter, the complaining organisation and the Committee of Ministers of the Council of Europe with a written decision on whether the circumstances set out in the complaint amount to a breach of the Charter. The decision will include the ECSR's reasoning and, where the decision is not unanimous, this will also be explained.

Decisions are published on the Council of Europe's website [here](#).

Decisions of the ECSR are final and cannot be appealed.

Decisions of the ECSR, insofar as they refer to binding legal provisions, must be respected by the States concerned and national authorities are required to take measures to give effect to them under domestic law. However, the ECSR's decisions are not directly enforceable through national legal systems. In practice, this unfortunately means that, where the relevant State does not voluntarily take steps to comply with the ECSR's decision, the complaining organisation cannot force it to do so.

Where the ECSR determines that there has been a breach of the Charter, the relevant State is required to notify the Committee of Ministers of the measures it has taken or plans to take to bring the situation into conformity. Where, taking into account the decision of the ECSR, the Committee of Ministers is unhappy with the relevant State's actions or proposed actions, it can also pass a formal resolution (by two-thirds majority) detailing recommended steps for the State to take.

The State must continue to regularly report to the ECSR and the Committee of Ministers on the law or practice which caused the breach until the ECSR considers the breach to have been resolved.





Case Study: Collective Complaint No 100/2013 European Roma Rights Centre (ERRC) v. Ireland under the European Social Charter

The European Roma Rights Centre (ERRC) brought a complaint under the European Social Charter to the European Committee of Social Rights, which monitors state parties to the Charter, through a Collective Complaints Procedure and through a national Reporting System. The ERRC's complaint centred on Ireland's unsatisfactory application of the Charter with respect to accommodation for Travellers. Likewise, the ERRC contended that Section 19 of the Public Order Act 1994 is unduly wide leading to unreasonable and disproportionate effects on Travellers, and there is a lack of due process consistent with the impacted rights. Essentially, the ERRC were contending that the Act was indicative of a general lack of respect for nomadic lifestyle.

The Committee found that the Government was in violation of Article 16 of the Charter on the grounds that there were insufficient provisions of accommodation for Travellers; the sites that were available were in an inadequate condition; there were inadequate safeguards for Travellers threatened with eviction, and that evictions are carried out without the necessary safeguards. As a result, the Committee recommended that Ireland pay €2000 to the ERRC for expenses incurred during the proceedings.

In 2021, Ireland was invited to make a submission to the Committee on the work that has been done since the result of the collective complaint. The Committee noted, from the submission, that Ireland had made progress in a number of areas including: provisions for accommodation, access to housing and the refurbishment of current accommodations. However, the Committee found that the Ireland still fell short of conforming to Article 16 of the Charter. This was primarily due to the continued lack of adequate safeguards for Traveller evictions.



Case Study: Commission of the European Communities v Ireland CJE/05/37

Ireland, as a member of the European Union, is subject to directives which set out a goal that all EU countries are to achieve. In this instance, Ireland was investigated by the Commission of the European Communities in relation to the 1975 Directive on Waste. This Directive set out a regime for waste management within the EU. The Commission had received twelve complaints regarding Ireland's waste management system between 1997 and 2000. The complaints focused on the fact that Ireland was failing to meet its obligation to ensure that all municipal landfills hold the permit required by the Directive. In July 2001, the Commission published their opinion concluding that Ireland had in fact failed to fulfil their obligations under the Directive.

In 2005, the Commission found that Ireland had failed to comply with the recommendations in their opinion and, as a result, the Commission brought legal action against Ireland to the Court of Justice of the European Union (CJEU). Ultimately, the CJEU held that the Commission's holding was correct and Ireland was in breach of its duties by failing to ensure that only permit holders dispose of waste.

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