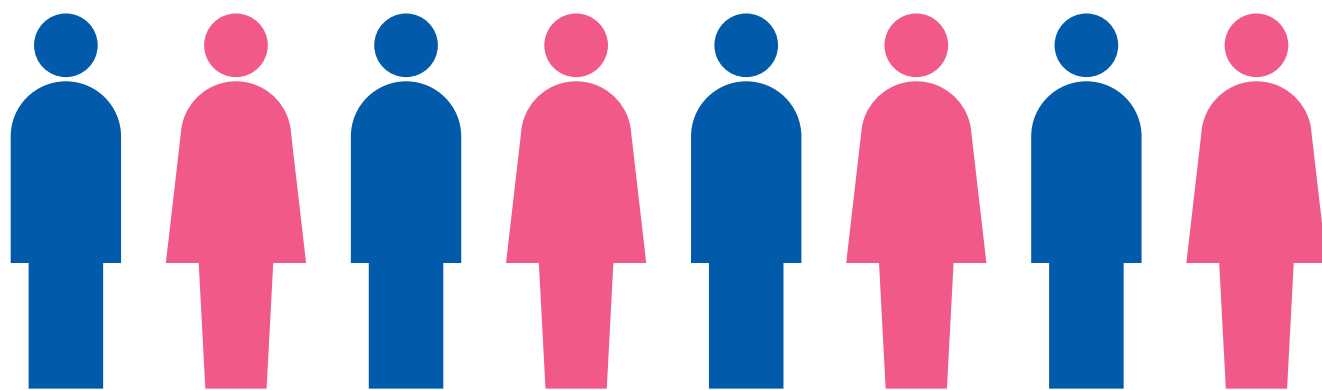
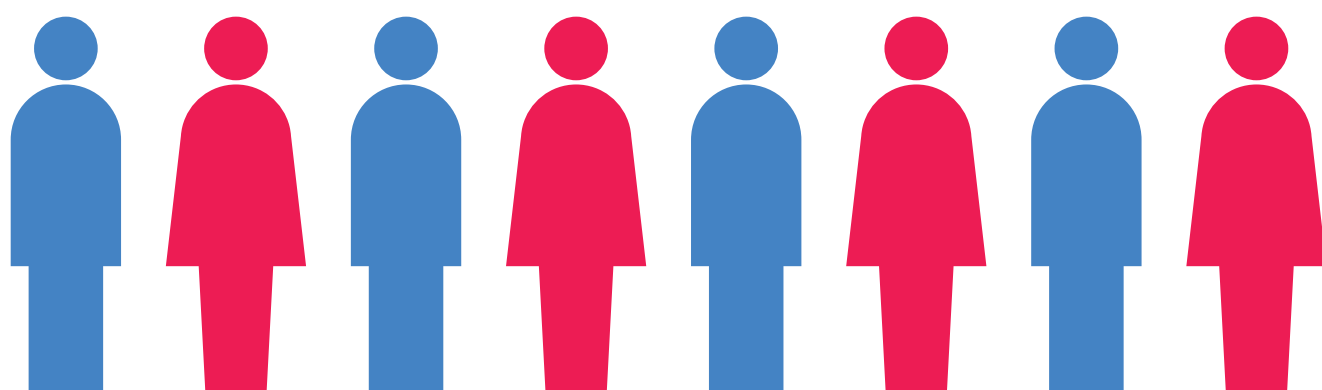


An analysis of the introduction of socio-economic status as a discrimination ground

By Tamas Kadar



Foreword

The Equality & Rights Alliance has long espoused the introduction of a socio-economic status ground into our employment equality and equal status legislation. The introduction of such a ground is immediately suggested by the wide range of discrimination experienced on this socio-economic status ground. This experience covers, in particular, the key fields of employment, education, housing and accommodation, and health. This discrimination has deepened and been exacerbated by the economic and financial crisis and the deepening poverty that has been a result of how this crisis has been managed. Our equality legislation, with its nine different grounds of discrimination, has an admirable and important aspiration to be comprehensive in its coverage. This aspiration remains to be realised while the ground of socio-economic status is still not included.

The establishment of the Irish Human Rights and Equality Commission is central to a new context that has been created for work on equality, non-discrimination, and human rights. It is at the heart of a new integrated approach to equality and human rights. This offers great potential, while it holds some threats. Integration must mean more than joined up silos if the potential is to be realised and any threats averted. The Equality & Rights Alliance has offered new thinking on how this integration could be realised in a range of publications. The ground of socio-economic status, if enshrined in equality legislation, offers a fulcrum around which a valuable and impactful integration could be built.

The Equality & Rights Alliance commissioned this publication as a means of stimulating debate on the introduction of a socio-economic status ground in equality legislation and of building momentum towards its introduction. The last time there was debate on this issue was as far back as 2004 when the Department of Justice, Equality and Law Reform commissioned research to assess the introduction of new grounds under equality legislation on foot of a position paper developed by the then Equality Authority. It is timely to update our knowledge and to re-engage the debate. This is an area where we have gradually fallen behind many other Member States in the EU. It would be timely to reassert a leadership we held for many years by introducing a new socio-economic ground into the equality legislation.

Tamas Kadar is the author of this report. He has served us well with his thorough and expert analysis of the context now pertaining in relation to a socio-economic status ground. He has succinctly drawn together a body of academic and practice learning to inform our debate and, adroitly gone further in teasing out this body of learning for its implications as to how best we might proceed in relation to a socio-economic status ground. We are grateful for this important contribution to the debate we must now have.

Niall Crowley

Chairperson, Equality & Rights Alliance

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Author

Tamas Kadar is the Head of Legal and Policy Team with Equinet, the European network of equality bodies. Previous to this he worked as a lawyer with the Hungarian Equal Treatment Authority. He graduated from the Faculty of Law in Budapest as a Doctor in Law and holds a Masters in Economic Science degree from University College Dublin.

He has written this paper in a personal capacity.

1. Introduction

The Irish Human Rights and Equality Commission (IHREC) was set up in November 2014 as a result of merging the Equality Authority and the Irish Human Rights Commission. This has created new opportunities, as the IHREC holds both a human rights and an equality mandate. This calls for a fresh assessment of equality legislation to ensure that it enables the institution to deal with economic and social rights and issues of socio-economic disadvantage both from an equality and a human rights perspective. The Equality and Rights Alliance have already identified this opportunity and stated that ‘the human rights tradition has much to offer to equality. It allows an extension of the equality agenda beyond the nine grounds set out in the Irish equality legislation, in particular to the ground of socio-economic status’¹.

Over ten years have passed since the publication of a report, commissioned by the Department of Justice, Equality and Law Reform, reviewing existing equality legislation in Ireland to assess the need to introduce new discrimination grounds, including the ground of socio-economic status². While the report found well documented evidence of links between poverty and discrimination, that a socio-economic status ground would serve the objectives underpinning equality legislation and enable a more sophisticated intersectional approach, and that some countries already prohibit discrimination on the basis of social origin or other similar grounds³, the legislator has so far not taken steps to introduce this new ground.

During the past decade a number of important changes have taken place internationally and nationally, both in equality law and at the societal level, justifying a renewed assessment of the situation.

The economic and financial crisis placed a crushing burden on the EU’s and Ireland’s economic and social systems. While the EU, in its EU 2020 Strategy for smart, sustainable and inclusive growth proposed to lift 20 million people out of the risk of poverty and social exclusion⁴ and introduced a European Platform against Poverty as a Flagship Initiative⁵, the number of people living at risk of poverty or social exclusion in the EU has increased since the adoption of the Strategy. According to the latest figures from Eurostat, in 2014 the number of people at risk of poverty or social exclusion represented a significant 24,4% of the total population in the EU 27, compared with 23,3% in 2009. In Ireland, this figure was as high as 27,6% in 2014, compared with a pre-crisis 23,1% in 2007⁶. This represents a growth of over 200,000 people at risk of poverty or social exclusion in Ireland. This increase underlines the need for a renewed debate on the need for a socio-economic status ground.

Since the report’s publication, thirteen new Member States have joined the European Union and many of them have adopted their first specific equality laws as a result of this being a requirement at EU level. It is noteworthy that many of them went beyond the minimum standards and introduced a socio-economic status ground in a comprehensive and modern national equality legislation.

This sets an example that Ireland, who has provided leadership in this field in the past, should be concerned to follow.

International and European Human Rights organisations have in the past decade increasingly called for the introduction of a social origin ground in national legislation both in Ireland and worldwide, with reference to international human rights and equality instruments that are ratified by and binding for Ireland. In parallel, this past decade also saw the publication of influential academic articles addressing the functioning of non-discrimination provisions in human rights instruments, and addressing the issue of poverty and deprivation as human rights violations resulting from and leading to discrimination⁷.

While the number of legal cases from national or international fora addressing the issue of socio-economic status is still relatively low, it has markedly increased in recent years. These decisions offer useful learning and underpin the need for a socio-economic status ground. Where it has been introduced in some jurisdictions as a new ground, it has become embedded over time, and is beginning to prove its worth.

1. Equality and Rights Alliance (2015) "Equality and Human Rights: An Integrated Approach", Dublin, Equality and Rights Alliance
2. S. Kilcommins, E. McClean, M. McDonagh, S. Mullally and D. Whelan (2004) "Extending the Scope of the Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination", Dublin: Stationery Office, Department of Justice, Equality and Law Reform
3. Ibid., p. xi-xiii.
4. According to Eurostat, at risk of poverty or social exclusion (AROPE) refers to the situation of people either at risk of poverty, or severely materially deprived or living in a household with a very low work intensity. The AROPE rate, the share of the total population which is at risk of poverty or social exclusion, is the headline indicator to monitor the EU 2020 Strategy poverty target. The at-risk-of-poverty rate is the share of people with an equivalised disposable income (after social transfer) below the at-risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income after social transfers.
5. Communication from the Commission. Europe 2020. A strategy for smart, sustainable and inclusive growth. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>
6. http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion
7. For example: Rory O'Connell (2009), "Cinderella comes to the Ball: Art 14 and the right to non-discrimination in the ECHR", Legal Studies, Issue No. 2; Polly Vizard (2006), "Poverty and Human Rights", Oxford University Press; Ida Elisabeth Koch (2009), "Human Rights as Indivisible Rights - The protection of Socio-Economic Demands under the European Convention of Human Rights", Martinus Nijhoff

2. Poverty and socio-economic status in policy

At the UN level, the Sustainable Development Goals were adopted in September 2015 as the UN's grand strategy for the coming 15 years. These Goals were adopted by world leaders and they apply universally to all countries, requiring them to 'mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind'. Goal 1 aims at ending poverty in all its forms everywhere, and it acknowledges that social discrimination and exclusion as well as a lack of participation in decision-making are manifestations of poverty. Goal 10 is to reduce inequality within and among countries and its targets include empowering and promoting the social, economic and political inclusion of all, irrespective of, among others, economic or other status; as well as ensuring equal opportunity and reducing inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard⁸.

In the second cycle of the UN's Universal Periodic Review (UPR) mechanism, in May 2016, Ireland received three recommendations from the Working Group on the UPR to adopt comprehensive anti-discrimination legislation. India recommended that Ireland adopt comprehensive anti-discrimination legislation that includes all the grounds set out in the ICESCR. Similarly, South Africa and Israel recommended that Ireland adopt comprehensive anti-discrimination legislation that includes all the grounds for discrimination⁹. The Government is required to furnish the UN Human Rights Council with a report in September informing whether or not it accepts these recommendations.

President Juncker of the European Commission announced, in his State of the Union speech in September 2015, the development of a European Pillar of Social Rights, focusing on employment and social policies and representing Europe's aspiration for a 'social triple A'. Equal opportunities and access to the labour market represent one of the three chapters in the first preliminary outline of the Pillar, published in March 2016. It acknowledges discrimination as a barrier to participation and notes that it leads to poverty and social exclusion¹⁰. The final version of the Pillar will be announced in 2017, following extensive public consultations.

The European Platform against Poverty and Social Exclusion, set up in 2010 in the framework of the Europe 2020 Strategy, acknowledges that the discrimination against certain groups, such as persons with disabilities, immigrants or ethnic minorities contributes to poverty and social exclusion¹¹. However, these documents fail to clearly acknowledge and respond to the other side of the link, namely poverty and socio-economic disadvantage leading to discrimination¹², thereby running the risk of perpetuating the charity-based approach to socio-economic disadvantage, instead of adopting a rights-based model. The European Year 2010 against poverty and social exclusion should have been a valuable opportunity to move towards this approach.

These political positions show that, both at the global and at the European level, poverty and social exclusion and discrimination on the basis of poverty and social exclusion constitute a key social challenge. It is a challenge that has stimulated world leaders to pledge their support to fight poverty in all its forms and European leaders to acknowledge the link between discrimination and poverty and social exclusion and to define equal opportunities as a cornerstone of their aspiration for a European social model.

8 <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>, accessed on 6 June 2016

9 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/157/18/PDF/G1615718.pdf?OpenElement>, accessed on 4 September 2016

10 http://ec.europa.eu/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights_en, accessed on 4 June 2016

11 <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52010DC0758>, accessed on 4 June 2016

12 See in Equinet (2010) "Addressing poverty and discrimination: two sides of the one coin", Brussels, Equinet

3. Poverty and socio-economic status in academic literature

Fredman describes the controversy and anxiety provoked by the appearance of socio-economic disadvantage in the anti-discrimination framework, noting opinions that socio-economic disadvantage should be tackled by policy action or that such a focus would endanger the effectiveness of 'traditional' grounds of discrimination. She argues that to leave decisions entirely to the political sphere means ignoring the political weakness of the most disadvantaged and rendering their needs invisible¹³. She puts forward that attention to socio-economic disadvantage will also bring tangible benefits for the 'traditional' discrimination grounds rather than sidelining them, as many of those on social benefits or minimum wage are women, ethnic minorities, or members of other groups at risk of discrimination¹⁴.

Pointing to legislative developments and discussions both at the international and national level, Fredman argues for the recognition and introduction of socio-economic status as a ground of discrimination. She points out that social exclusion is not just a temporary phase, it is systemic and often passed on from one generation to the other. She proposes that the definition of a socio-economic status ground should be asymmetric, referring to 'socio-economic disadvantage', to avoid the risk of challenges by the better off against programmes specifically benefiting poor people. Finally, apart from an individual enforcement model, Fredman also argues for the importance of positive duties on this ground that would require a proactive approach by public authorities, following a substantive equality approach and tackling inequalities of outcome¹⁵.

The UN's Vienna Declaration and Programme of Action held that extreme poverty inhibits the full and effective enjoyment of human rights and that extreme poverty and social exclusion constitute a violation of human dignity. This perspective is further developed by Lavrysen, using the capability approach, following the footsteps of Amartya Sen and Polly Vizard. The capability approach essentially argues that poverty and social exclusion cannot simply be described as economic phenomena, a mere shortage of financial resources¹⁶. Poverty and social exclusion are more than that and have more severe consequences in depriving persons of their 'capabilities'. They are a barrier to benefiting from all human rights and a barrier to full inclusion into society.

Persons in poverty experience constraints in enjoying their economic and social rights (capabilities), such as their right to adequate housing or healthcare, but also their civil and political rights, such as their right to private life, prohibition of torture, or even their right to life. Lavrysen suggests that the capability approach would allow the European Court of Human Rights (ECtHR) to focus on and prioritise the protection of the least advantaged and would mitigate the risk of focusing only on supporting the already well protected¹⁷. He finds that the case law supporting the rights of people living in poverty is rather limited.

The ECtHR provided protection to persons living in poverty using Article 2 (not providing basic healthcare and thereby putting life at risk), Article 3 (not providing basic social support), Article 8 (evictions or otherwise interfering with family life) and Article 1 of Protocol 1 (right to property) of the European Convention. Article 6 (right to a fair trial) has been used, most prominently in the *Airey v. Ireland* case, to provide procedural protection to persons living in poverty, requiring the provision of legal aid to ensure their effective access to courts¹⁸. Lavrysen also refers to Article 14 cases on non-discrimination, noting that the protection has so far been indirect, providing protection against discrimination on other grounds to disadvantaged groups that are typically at risk of poverty. However, in the *Horváth and Kiss v. Hungary* case the ECtHR took a step to explicitly recognize the role of socio-economic disadvantage in discrimination¹⁹.

Finally, Lavrysen finds that in certain cases, for example in the *Yordanova and Others v. Bulgaria* case on eviction, the ECtHR took the applicant's poverty into account when conducting its proportionality analysis²⁰. Lavrysen suggests that 'in cases concerning healthcare, eviction involving the risk of becoming homeless, fair trial and the taking into public care of children, the Court seems to have focused on the applicants' socio-economic barriers in the enjoyment of their Convention rights, which could be constructed as a recognition that poverty could result in "capability deprivation" under the ECHR²¹.

Lavrysen acknowledges that the ECtHR has never explicitly adopted such a capability approach, being focused on civil and political rights as opposed to economic and social rights, and being primarily concerned with negative obligations and State interference rather than positive obligations and State omission. He encourages the ECtHR to use a substantive equality approach, looking at the outcome and impact of discrimination and aiming at full equality in practice, to address issues of poverty. For this, it is necessary to recognize the links between poverty and discrimination, the way poverty leads to social exclusion, and to consider poverty as a separate discrimination ground²². It is further suggested that the ECtHR could also provide protection to people in poverty and socio-economic disadvantage because this places them in a particularly vulnerable position, something that the Court often takes into account in its proportionality analysis²³.

Equinet, the European Network of Equality Bodies recently published a perspective on the contribution of equality bodies to economic and social rights, noting the importance of a non-discrimination foundation to economic and social rights. It noted that equality bodies holding a mandate on a socio-economic status ground are better placed to make this contribution²⁴.

The Equal Right Trust guide on economic and social rights in the courtroom notes that 'whilst it is clear that the recognition of a ground of "socio-economic status" for the purpose of discrimination law by the courts has been very limited, there is a much clearer line of cases in which courts, when determining whether a state has taken adequate measures in pursuit of a right (be it civil, political, economic, social or cultural), are proving willing to require the state to give particular consideration to its obligation to identify most vulnerable socio-economic groups and to ensure their protection'²⁵.

The Equal Rights Trust guide notes that international and regional treaties and conventions do not explicitly recognise socio-economic status as a protected ground, but the ground of social origin could usefully be applied to many such cases. Making use of the open list of grounds in Article 14 of the European Convention, the UK High Court has already interpreted it to cover socio-economic status in the context of the right to education²⁶. Whilst also featuring other examples where the courts referred to socio-economic status, the guide acknowledges that none of the listed cases were brought solely on the basis of this ground but rather it was taken into account as a contributing factor to cases decided essentially on other grounds.

Both the Equal Rights Trust guide and the Comparative study of anti-discrimination and equality laws of the US, Canada, South Africa and India written by Fredman and published by the European Commission note the existence in the South African Equality Act of a 'Directive Principle' that requires the Minister to give special consideration to including in the list of grounds, among others, socio-economic status. While so far there has been no legislative amendment in this regard, given the open list of grounds courts are allowed to accept and use this ground. Courts can do so in accordance with the definition given in the Act, covering 'the social or economic condition of a person who is disadvantaged by poverty, low employment status, or lack of or low-level educational qualifications'²⁷.

This recent academic literature signals that socio-economic considerations for all generations of human rights have started to take root. This reflects a growing concern for socio-economic equality and the establishment of links between civil/political and economic/social rights. This is often founded on varieties of the capability approach, claiming that without such links between the different generations of human rights and without a concern for socio-economic equality, persons with a socio-economic disadvantage are in fact at risk of losing real access to all human rights. While the courts and legal professionals have so far only given limited signs of starting to move in this direction, the academic literature offers a number of ways to continue building on these important initial steps.

- 13 Sandra Fredman (2010), "Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage onto the Equality Agenda", *European Human Rights Law Review*, page 3-4
- 14 *Ibid.*, page 6
- 15 *Ibid.*, page 10
- 16 Laurens Lavrysen (2015) "Strengthening the protection of human rights of persons living in poverty under the ECHR", *Netherlands Quarterly of Human Rights* 2015/3, Utrecht, page 2-7.
- 17 *Ibid.*, page 20
- 18 Equal Rights Trust (2014), "Economic and social rights in the courtroom", London, Equal Rights Trust, page 71
- 19 See Horváth and Kiss v. Hungary, (application no. 11146/11), 29 January 2013, para. 115
- 20 *Ibid.*, page 8-13
- 21 *Ibid.*, page 13
- 22 *Ibid.*, page 26-32
- 23 *Ibid.*, page 32-34
- 24 Equinet (2015) "Equality bodies contributing to the protection, respect, and fulfillment of economic and social rights", Brussels, Equinet, page 3-4
- 25 Equal Rights Trust (2014), *op. cit.*, page 71
- 26 *Ibid.*, page 70
- 27 *Ibid.*, page 69 and European Commission (2012), "Comparative study of anti-discrimination and equality laws of the US, Canada, South Africa and India", Luxembourg, Office for Official Publications of the European Communities, page 37

4. Socio-economic status in human rights instruments

The 2004 report assessing the need for new discrimination grounds in Ireland notes that at international level social origin is the term used most widely as the category for addressing socio-economic status and that it appears primarily in anti-discrimination provisions in human rights treaties and corresponding case law, rather than in equality legislation and case law per se²⁸.

The International Covenant on Civil and Political Rights (ICCPR), that Ireland ratified in 1989, includes two relevant non-discrimination provisions. Article 2 ensures non-discrimination with regard to rights recognized in the ICCPR, while Article 26 provides for equality before the law and a general prohibition of discrimination. Both Articles contain an open list of discrimination grounds and make explicit reference to, among others, social origin, property and birth.

The recent *Mellet v Ireland* decision of the Human Rights Committee concerned the abortion of a foetus with a fatal impairment, for which the claimant had to travel to the UK due to legal restrictions in Ireland. The Committee determined that Article 26, which provides for the right to equality before the law, had been violated as the State “failed to adequately take into account her [Ms. Mellet’s] medical needs and socio-economic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose” under Article 26. The Committee identified two prohibited grounds for finding a violation of Article 26: discrimination on grounds of socio-economic status and gender discrimination²⁹.

Ireland ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1989 but it has not yet ratified its Optional Protocol, accepting the individual complaints procedure. Similar to the ICCPR, the ICESCR contains a non-discrimination provision with an open list of grounds and makes explicit reference to, among others, social origin, property and birth.

The UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 20 in May 2009, on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the ICESCR), providing an authoritative definition to grounds of discrimination³⁰. Social origin is defined as referring to a person’s inherited social status, linking it also to property status, birth and economic and social status. Property is seen as a broad concept including real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods and chattels, and income), or the lack of it. As a discrimination ground, birth is seen as covering descent and inherited status (e.g. caste) as well as those born out of wedlock.

The General Comment lists a number of grounds, such as disability, age, health status or sexual orientation, under ‘other status’, not explicitly mentioned in the ICESCR. Among these, ‘economic and social situation’, as a clearly socio-economic status ground, is also defined. According to the definition, ‘individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places³¹.

The UN Committee on Economic, Social and Cultural Rights published its latest Concluding Observations on Ireland in July 2015. In this, the Committee regretted that no steps have been taken to incorporate the ICESCR into domestic law and, in particular given the disproportionately adverse effects the austerity measures had on disadvantaged and marginalized individuals and groups, that domestic legislation does not provide protection against discrimination on all grounds of discrimination prohibited by the ICESCR.

In its submission to the Committee, the Irish Human Rights and Equality Commission recommended that the State review and revise the current scope of the equality grounds

with a view to amending them to include discrimination on the basis of socio-economic status. The IHREC based this recommendation on arguments familiar from the 2004 report by the Department of Justice, Equality and Law Reform, namely that including this ground would serve the objectives of equality legislation and would promote a more sophisticated intersectional approach to discrimination. It is suggested that any definitional challenges could be overcome by assessing a number of key indicators. Moreover, the IHREC points to Article 40.1 of the Irish Constitution (equality before the law), to recall that Irish Courts have on occasion referred to the social or socio-economic background of a person and ruled that differentiation on that basis contravenes the protection of equality guaranteed by the Constitution³².

The UN's Guiding Principles on extreme poverty and human rights were adopted by the Human Rights Council in September 2012³³. It notes that persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another. Discrimination is listed as both a cause and a consequence of poverty, with those living in poverty also being subject to discriminatory attitudes and stigmatization from public authorities and private actors precisely because of their economic status³⁴. The Guiding Principles foresee that all forms of discrimination on grounds of economic situation or other grounds associated with poverty must be eliminated and invite States to ensure that persons living in poverty have access to remedies in cases of discrimination on the basis of their socioeconomic situation³⁵.

Magdalena Sepúlveda Carmona, the UN's Independent Expert on the question of human rights and extreme poverty undertook a mission to Ireland in 2011. She reported to the Human Rights Council that the impact of the crisis has been severe, particularly for the most vulnerable segments of Irish society. She reiterated that Ireland's human rights obligations apply even during times of economic hardship, and that recovery measures must not disproportionately impact the poorest segments of society, calling for removing the barriers that prevent the most vulnerable segments of society from accessing their entitlements³⁶.

The UN's International Labour Organization dedicated a specific Convention to prohibiting discrimination in respect of employment and occupation (Convention No. 111). The Convention, that Ireland ratified in 1999, names social origin as a specific ground of discrimination. In the ILO's Q&A on business, discrimination and equality, social origin is defined as including social class, socio-occupational category and caste³⁷.

The ILO's Committee of Experts on the Application of Conventions published its observations on Ireland in respect of Convention No. 111 in 2014. A specific observation is dedicated to discrimination based on political opinion or social origin and the Committee asked the Irish Government to take steps to ensure legislative and practical protection against discrimination based on these grounds³⁸.

In 2011 the Committee on the Elimination of Discrimination against Women (CEDAW Committee) found, in the *Alyne da Silva Pimentel v Brazil* case, that Brazil breached its obligations under the CEDAW as it did not provide adequate obstetric care to her and adequate civil redress to her family after she died. Importantly, the Committee recognised her belonging to a particularly vulnerable social group and established discrimination not only on the basis of Ms. da Silva Pimentel's sex, but also on the basis of her status as a woman of African descent and her socio-economic background³⁹.

At the Council of Europe level, the European Convention on Human Rights includes socio-economic status grounds. Article 14 explicitly prohibits discrimination in respect of the rights and freedoms set forth in the Convention on the grounds of social origin, as well as on property, although these grounds are not defined. The Article provides an open list of grounds and thus socio-economic status grounds could also be included in the future. This option has already been promoted by academia and the European Court of Human Rights seems to have made some initial steps in this direction in a number of cases.

In the *Garib v. The Netherlands* case, concerning a policy imposing minimum income conditions on persons wishing to settle in a number of inner-city areas of the city of Rotterdam, a divided Court found that the policy did not violate the applicant's liberty of movement and freedom to choose their residence. In their joint dissenting opinion, Judges López Guerra and Keller criticize the judgment for not even analyzing the discrimination aspects of the case. They conclude that the income-based restriction leads to stigmatization

of the poor and that any stereotyping legislation, especially where it involves stigmatization of the poor, is per se problematic. Besides the direct discrimination based on income, they suggest that the policy also creates indirect discrimination based on race and gender, since the people most gravely affected by unemployment are immigrants and single mothers⁴⁰.

In the *Soares de Melo v. Portugal* case, seven of the applicant's children were taken into state custody, in large part due to her unemployment and material deprivation. While the Court did not analyse the case as a question of discrimination, it found that the authorities' conduct constituted a violation of Article 8 of the Convention (right to respect for private and family life) and that the social services had an obligation to provide assistance to the family to allow the children to live with their mother⁴¹.

The Council of Europe's revised European Social Charter, ratified by Ireland in 2000, prohibits discrimination in its Article E on an open list of grounds, explicitly listing social origin. Article 30 of the revised European Social Charter defines the right to protection against poverty and social exclusion and the European Committee of Social Rights (ECSR) issued a statement of interpretation of Article 30. In this, the ECSR emphasizes the very close link between the effectiveness of Article 30 and the enjoyment of the rights recognized by other provisions, 'without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty'⁴². In the case *International Movement ATD Fourth World v. France*, examining issues of eviction and the lack of adequate housing, the ECSR found that the State's policy in respect of housing for the poorest is insufficient, lacking a coordinated approach to promote the effective access of persons who live or risk living in a situation of extreme poverty to housing. The ECSR found a violation of Article 30 taken alone as well as in conjunction with Article E of the revised European Social Charter⁴³.

At the European Union level, Article 21 of the Charter of Fundamental Rights of the European Union (Charter), which has the same legal value as the Treaties since 2009, prohibits discrimination on an open list of grounds, explicitly naming the grounds of social origin and property. The provisions of the Charter are binding for Member States when they are implementing Union law.

In the domain of human rights, therefore, discrimination on the basis of socio-economic grounds is prohibited horizontally with regard to all human rights. The main human rights documents at the United Nations, Council of Europe or European Union level, all of which are legally binding for Ireland, list socio-economic grounds. The treaty bodies and courts responsible for the interpretation and enforcement of these provisions have started to increasingly refer to socio-economic discrimination alone or in conjunction with other human rights violations.

28 Department of Justice, Equality and Law Reform (2004) op. cit., page xxi.

29 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/116/D/2324/2013&Lang=en, accessed on 4 September 2016

30 <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.doc>, accessed on 6 June 2016

31 Ibid., point 35

32 Irish Human Rights and Equality Commission (2015), "Ireland and the International Covenant on Economic, Social and Cultural Rights", IHREC, Dublin, page 40

33 Office of the High Commissioner for Human Rights (2012), "Guiding Principles on Extreme Poverty and Human Rights", Office of the High Commissioner for Human Rights, Geneva

34 Ibid., page 5

35 Ibid., page 19

36 http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.34.Add.2_en.pdf, accessed on 6 June 2016

37 "Social origin includes social class, socio-occupational category and caste. Social origin may be used to deny certain groups of people access to various categories of jobs or limit them to certain types of activities. Discrimination based on social origin denies the victim the possibility to move from one class or social category to another. For instance, in some parts of the world, certain "castes" are considered to be inferior and therefore confined to the most menial jobs." - http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/index.htm#Q2, accessed on 6 June 2016

38 http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3147192:NO, accessed on 6 June 2016

39 Equal Rights Trust (2014), op. cit., page 70. The CEDAW Committee's views can be found under http://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-17-2008_en.pdf

40 Case of *Garib v. The Netherlands* (Application no. 43494/09), joint dissenting opinion of Judges López Guerra and Keller, paragraphs 18 and 24

41 Case of *Soares de Melo v. Portugal* (Application no. 72850/14)

42 http://hudoc.esc.coe.int/eng/?i=2013_163_06/Ob/EN

43 *International Movement ATD Fourth World v. France* (Complaint no. 33/2006), paragraphs 163-174

5. Socio-economic status in equality law

The EU equal treatment directives, requiring Member States to put in place their own equality legislation, cover the grounds of race and ethnic origin, gender, age, disability, religion or belief and sexual orientation. They do not cover socio-economic status or any similar ground. However, it is important to take note of EU primary legislation.

Article 2 of the Treaty on European Union names equality and non-discrimination as founding values of the Union, without limiting them to certain grounds. Article 9 of the Treaty on the Functioning of the European Union introduces a requirement of social inclusion mainstreaming when it stipulates that ‘In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health’. Equality legislation and equality policies at EU level, therefore, need to be assessed for their impact on social exclusion⁴⁴. Article 21 of the Charter of Fundamental Rights prohibits discrimination, among others, on the grounds of social origin and poverty.

At the national level, the 2004 report on the assessment of new grounds of discrimination notes a widespread recognition that individuals face discrimination on the basis of their social and economic backgrounds and that many jurisdictions prohibit discrimination on the basis of social origin. At the same time, it observes a shortage of effective legal remedies and jurisprudence⁴⁵.

While jurisprudence for discrimination based on socio-economic status is still limited, a number of European countries have moved to prohibit discrimination on this ground. The most recent comprehensive overview of equality legislation, prepared for the European Network of Legal Experts in gender equality and non-discrimination, shows that legislation in 20 of the 35 European countries provides protection against discrimination on a ground related to socio-economic status⁴⁶. This compares to 18 of the 33 countries in the 2015 report⁴⁷.

While the grounds are named in different ways and their English translation can hide further differences, for the purposes of this paper the expressions used can be grouped in four clusters:

Social origin, following the wording of international instruments (used in 10 jurisdictions, as in 2015)

Social status, social position, social condition or social class, taking a wider and more holistic approach that can encompass a number of more narrowly construed categories (used in 13 jurisdictions, compared to twelve in 2015)

Wealth, income, property, economic situation, financial status, placing the emphasis on financial aspects (used in 16 jurisdictions, compared to fourteen in 2015)

Education, focusing on a specific field of disadvantage (used in 5 jurisdictions, as in 2015)

The report looks into the grounds covered by the mandate of equality bodies and lists 14 equality bodies (compared to eleven in 2015) that cover a ground related to socio-economic status. Seven equality bodies cover the ground of social origin (compared to five in 2015), seven equality bodies cover the ground of social status or similar, and three equality bodies cover the ground of education. Eleven equality bodies cover the ground of wealth or similar, compared to only six in 2015. This indicates a significant move across the EU towards extending the mandate of equality bodies to cover socio-economic status grounds⁴⁸.

Equinet has provided valuable evidence on the added value of the socio-economic status ground. The arguments for this ground are based on the notion that discrimination is one cause of poverty and social exclusion, that poverty and social exclusion increase the risk of discrimination and that poverty and social exclusion contribute to under-reporting of discrimination⁴⁹.

This ground is a relatively new addition to most equal treatment laws and practitioners are in a phase of finding out its real implications. Equinet's 2010 report found that the added value of a socio-economic status ground was not always clear even to equality bodies and they have not yet found the best way to operationalize this ground. Some equality bodies pointed to the symbolic importance of the ground and others pointed out that complaints, that under EU legislation would not be justiciable, can be handled⁵⁰. Equinet's 2015 report evidences greater clarity among equality bodies. It notes advantages in that equality bodies implementing equal treatment legislation, that includes a ground of socio-economic status, are better placed to contribute to the protection and fulfilment of economic and social rights. It notes that such equality bodies are better placed to provide a non-discrimination foundation to economic and social rights⁵¹.

It is noteworthy that, while the 2010 report found very little evidence of casework on the relatively new socio-economic grounds, in the 2015 report it appears that in many countries the ground has become more embedded and better understood by equality bodies and other legal practitioners and is beginning to show its value with increased and more comprehensive casework.

The number of cases received by equality bodies on this ground shows large variations, with some of them receiving no claims while others report that cases on this ground accounted for 25% of their casework. In 2010, casework on this ground was reported as most prominent in the fields of housing, education and the provision of goods and services, with less cases in the field of employment⁵². Equinet's 2015 report lists cases from the field of employment, social services, public and private housing, healthcare and the social protection systems⁵³.

The link between economic and social human rights and equal treatment on the basis of socio-economic status is indisputable as has already been set out. Discrimination on the basis of socio-economic status leads to and materializes as a barrier to full enjoyment of human rights and particularly economic and social rights⁵⁴. Equinet reports that disadvantaged socio-economic status result in a weaker position from which to vindicate one's human rights and that equality bodies can lack legal competence to deal with some complaints or elements of some complaints they are receiving. The introduction of this ground of socio-economic status offers valuable opportunities to equality bodies that double as National Human Rights Institutions as they have a wider mandate to effectively respond to human rights and discrimination complaints and to develop approaches based both on an integrated approach to human rights and equality⁵⁵.

Discrimination on the ground of socio-economic status is often combined with discrimination on other grounds, resulting in additional harm and social exclusion. As most legal systems are ill-equipped to deal with multiple and intersectional discrimination, this also means that less cases are taken on the socio-economic status ground, especially if jurisprudence on the other ground(s) is well-established.

At the international level, discrimination on the ground of socio-economic status appears to have a better chance of being taken into account in intersection with other grounds, as a contributing factor when there is a finding of discrimination on another ground⁵⁶. Ethnic origin, disability, health status, age, family status, citizenship or gender could all be grounds that often intersect with the socio-economic status ground⁵⁷. In multiple discrimination scenarios socio-economic status can serve as the ground for direct discrimination, resulting in indirect discrimination on the other ground(s). It can also be the ground for indirect discrimination as direct discrimination on other grounds often disproportionately targets and affects persons in a vulnerable socio-economic situation.

44 Equinet (2010) op. cit., page 6

45 Department of Justice, Equality and Law Reform (2004) op. cit., page xi.

46 European Commission (2016) "A comparative analysis of non-discrimination law in Europe 2015", Luxembourg, Publications Office of the European Union, page 12-14. The report covers the 28 EU Member States, the former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Turkey.

47 European Commission (2015) "Developing Anti-Discrimination Law in Europe. The 28 EU Member States, the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Norway and Turkey compared", Luxembourg, Publications Office of the European Union, page 11-13

48 European Commission (2016), op. cit., page 137-147 and European Commission (2015), op. cit., page 115-119

49 Equinet (2010), op. cit., page 5

50 Ibid., page 8-9

51 Equinet (2015), op. cit., page 3 and 12

52 Equinet (2010), op. cit., page 9

53 Equinet (2015), op. cit.

54 Equal Rights Trust (2014), op. cit., page 69

55 Equinet (2010), op. cit., page 11

56 Equal Rights Trust (2014), op. cit., page 71

57 Equinet (2010), op. cit., page 10

6. Socio-economic status ground in practice

In **Ireland**, equality legislation does not contain a socio-economic status (or related) ground. However, Article 40.1 of the Constitution of Ireland states that “[a]ll citizens shall, as human persons, be held equal before the law”. The Irish Human Rights and Equality Commission points out that Irish courts regularly apply this general equality guarantee in the Constitution in their case law⁵⁸. Given the general nature of this equality guarantee, it might also encompass equality regardless of one’s socio-economic status.

The former Equality Authority proposed the introduction of a socio-economic status ground in a 2002 position paper, stating that existing research suggests that there is a relatively high degree of socio-economic discrimination in the jobs market, offering examples concerning long-term unemployed people⁵⁹. This position paper was followed by the 2004 report, commissioned by the Department of Justice, Equality and Law Reform, suggesting that a socio-economic status ground would serve the objectives underpinning equality legislation, and would also enable a more sophisticated intersectional approach⁶⁰.

The Equality (Miscellaneous Provisions) Act 2015 introduced “housing assistance” as a new ground into the Equal Status Act 2000 to protect against discrimination in accommodation⁶¹. As a result, from January 2016 people in receipt of housing assistance, social welfare payments, such as HAP and Rent Supplement, can no longer be discriminated against in relation to the provision of accommodation or related services. This new ground, introduced specifically for the field of housing and accommodation, begins to open up a socio-economic status ground.

In **Belgium**, the federal antidiscrimination act⁶² explicitly includes the protected grounds of wealth (‘fortune’ in French) and social origin (‘origine sociale’). UNIA, the Interfederal Centre for Equal Opportunities defines the ground of wealth as ‘the fact of having financial means, whatever the origin’⁶³. UNIA’s Annual Report for 2014 indicates 66 case files for 2013 and 80 case files for 2014 on this ground. This represents 4% of all new case files of UNIA in 2014, equaling the number of case files on the ground of sexual orientation and exceeding the number of cases on the ground of health status or political conviction.

UNIA’s statistics show that case files on the basis of wealth are predominantly from the field of housing, where this ground represents 35% of all cases and typically concerns the refusal of persons on welfare or unemployment benefits. A typical example provided is a landlord, who required potential tenants to have a permanent employment contract and a minimum income of EUR 2000⁶⁴. In another case, the court found that a landlord had discriminated by refusing to rent his flat to someone with a fixed term contract⁶⁵.

In **Bulgaria**, Article 4 of the Protection against Discrimination Act lists 19 grounds in a semi-open list of grounds. The 19 grounds include explicit mention of ‘education’, ‘social status’, and ‘property status’. The Bulgarian Commission for Protection against Discrimination notes that ‘the specific mention of the ground of socio-economic status enables a more complete approach to all forms of inequality, including both economic inequality and identity based inequality’⁶⁶.

In 2014 the Commission initiated 452 case files, out of which 21 case files on the ground of social status (4,6%), 11 case files on the ground of property status (2,4%), and 6 case files on the ground of education (1,3%). The Commission, as a quasi-judicial equality body, established discrimination in 16 cases on social status, 10 cases on education and 4 cases on property status⁶⁷.

In **Croatia**, Article 1(1) of the Anti-Discrimination Act lists social origin, property, education and social status among the protected grounds of discrimination. The summary report of the Ombudsman for 2014 indicates that the ground of education represented 6.1% of all complaints. In the section on discrimination in the area of labour and employment the Ombudsman reports a large number of complaints on the ground of education.

According to the report, the experiences of homeless people as a specific group show that they are faced with many issues, stereotypes and prejudices because of their social position, which also makes their employment very unlikely. Homeless people also face unequal access to social welfare rights. Discrimination in the area of healthcare is also an issue and the feeling of injustice and helplessness is particularly associated with the most vulnerable social groups, such as retired and unemployed persons, workers not receiving salary and patients with severe diagnoses⁶⁸.

In **France**, anti-discrimination legislation currently does not protect from discrimination on the ground of socio-economic status, although for certain cases it might be relevant that in 2014 the ground of 'place of residence' was added to the list of grounds. A legislative proposal that would recognise socio-economic status or social vulnerability ('*précarité sociale*') as a new ground of discrimination is currently in front of the Senate and the National Assembly⁶⁹.

ATD Fourth World, an NGO fighting social exclusion has been advocating for protection against discrimination on the basis of socio-economic status and collects cases of discrimination based on socio-economic status. ATD Fourth World, together with ISM Corum, conducted a scientific situation testing exercise for this ground in 2013. Eight hundred test CVs were mailed out requesting work as supermarket cashiers, half of them including two indicators of poverty. The situation testing showed that CVs in this group received job offers 50% less frequently and the net discrimination rate for applicants whose CVs implied poverty was +30 percent in total, +25 percent among men, and +35 percent among women⁷⁰.

In **Britain**, the Equality Act 2010, as adopted, did not list a ground related to socio-economic status as a protected characteristic. However, it introduced a public sector duty regarding socio-economic inequalities, obliging relevant authorities to have due regard to the aim of reducing the inequalities of outcome which result from socio-economic disadvantage⁷¹. However, following the government's Equalities Red Tape Challenge, it was announced on 15 May 2012 that this duty would not enter into force and the government would proceed with its repeal given it would place unnecessary or disproportionate burdens on business⁷².

In **Hungary**, Article 8(1) of the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities prohibits discrimination on the basis of social origin and financial status. In 2014, the Equal Treatment Authority (ETA) used an online questionnaire to measure the rights awareness among students in higher education, generating 3,500 responses. Financial situation was among the grounds on which respondents have most often reported to have experienced discrimination⁷³.

The ETA reported a settlement concluded in a case in which the petitioner, citing their property status, found it injurious that the municipality, after having accepted their equity application for public housing, only offered them flats that were in bad condition. As a result of the settlement, the petitioner was offered a choice of the real estate most appropriate for their needs from a selection of housing provided by the municipality⁷⁴.

In 2014-2015 the Commissioner for Fundamental Rights of Hungary conducted a large scale comprehensive investigation into local government legislative decrees and joint official control practices coordinated by the Miskolc Local Government Police in the field of housing. The report of the Commissioner and the Deputy Commissioner established that the recurring official controls concentrating on segregated areas mostly inhabited by Roma resulted in direct discrimination based on social origin and financial status, and indirect discrimination based on belonging to a minority⁷⁵.

In **Northern Ireland**, the introduction of a socio-economic status ground into equality legislation has been under discussion since 2004. The Equality Commission for Northern Ireland (ECNI) has not supported the introduction of this new ground in the legislation mainly as it considers that it would place a burden on the Single Equality Act and would shift the focus from disadvantaged groups to a more general level and to disadvantage per se. However, in the same review ECNI clearly highlights the link between poverty and inequalities faced by individuals protected under equality legislation and reports about its recommendations to stakeholders to take action against poverty and social exclusion experienced by a number of equality groups. This work does not only call attention to the

risk of equality groups experiencing poverty and social exclusion, but it also points to the effects of poverty on life chances and making it clear that socio-economic disadvantage can reinforce and increase inequalities associated with equality grounds⁷⁶.

These EU countries are mentioned in greater detail to exemplify the existence, use and benefits of socio-economic grounds in equality legislation across Europe. However, it is to be noted that a number of other countries have also introduced a socio-economic ground in their legislation. Equinet's 2015 report shows that such grounds are being implemented in the equality legislation in **Albania, Cyprus** (importantly also named in the Constitution), **Latvia, Montenegro, Serbia** and **Slovakia**. Equinet's report provides an example where the Commissioner for Protection of Equality (CPE) in Serbia found discrimination on the ground of financial status and issued a recommendation to the Municipal Police that had published a job advertisement requiring the results of a physical examination issued by one specific health institution to be submitted. The candidates had to pay for the examination themselves. The CPE found that this amounted to indirect discrimination⁷⁷. The detailed analysis of these countries' experiences goes beyond the scope of this paper, but it is suggested that it could provide further useful learning.

Outside the EU, the 2004 report assessing new grounds of discrimination in Ireland noted that the most well-developed body of jurisprudence on social origin/socio-economic status discrimination was to be found in **Canada**. It noted a variety of socio-economic status-related grounds in the laws of different Canadian provinces and territories⁷⁸ and no protection on this ground at the federal level. At the time of writing the 2004 report a review of the Canadian Human Rights Act had led to proposals to introduce a socio-economic status ground into the Act⁷⁹. In 2016, section 3 of the Canadian Human Rights Act still does not include a ground related to socio-economic status.

In **British Columbia**, section 10 of the British Columbia Human Rights Code prohibits discrimination on the ground of 'lawful source of income' in tenancy premises. The British Columbia Human Rights Tribunal received 8 complaints on this ground in 2013-2014 (1% of the total) and 6 complaints in 2014-2015 (0,4%)⁸⁰. In Ontario, section 2 of the Human Rights Code prohibits discrimination on the ground of 'receipt of public assistance' only in accommodation. The definition applied by the **Ontario** Human Rights Commission links the 'receipt of public assistance' with the experiences of poor people and people living in poverty⁸¹.

In the **Northwest Territories** (N.W.T.), the ground of 'social condition' has been inserted into the Human Rights Act in 2002. Section 1 of the Act defines social condition as meaning 'the condition of inclusion of the individual, other than on a temporary basis, in a socially identifiable group that suffers from social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or any other similar circumstance'.

According to its annual report for 2014-2015, social condition was the third most prominent ground of discrimination in the complaints submitted to the N.W.T. Human Rights Commission⁸². In a leading case on this ground, the Northwest Territories Human Rights Adjudication Panel, the N.W.T. Court of Appeal and the N.W.T. Supreme Court all found that seasonal workers (from a region of Canada that suffers high unemployment) can be considered a group protected from discrimination on the ground of social condition⁸³.

Section 10 of the **Québec** Charter of Human Rights and Freedoms has contained a general prohibition of discrimination and harassment on the ground of 'social condition' since its adoption in 1975⁸⁴. The Charter does not define social condition, but case law and the Quebec Commission des droits de la personne et des droits de la jeunesse defines it as one's situation in society determined by income, occupation, or level of education.

The selection of cases on this ground featured on the Commission's website suggests that the majority of social condition complaints concern the field of housing. This is confirmed in the Commission's annual report for 2014-2015, with social condition invoked as a ground in 7 housing cases, 4 cases on goods and services, 2 cases on accessibility, 1 employment case, and 2 cases in other fields, representing altogether 2% of all case files opened⁸⁵. In one case in 2014, taken up by the Commission, a landlord was ordered by the Human Rights Tribunal to pay \$6000 compensation and \$1500 punitive damages

for refusing to rent a property to a couple due to their social condition, where one of the partners was a student with a scholarship and the other had a low revenue, even though the rent would have represented less than 30% of their combined income. The Commission underlined that while landlords have the right to ensure adequate financial capacity of the tenants, they are obliged to respect the Québec Charter of Human Rights and Freedoms⁸⁶.

In 2004 the authors of the Irish report assessing new grounds of discrimination had to primarily look for examples of socio-economic status grounds outside Europe due to a lack of relevant examples and relevant experiences in Europe. In little over ten years the situation has changed enormously. The European Network of Legal Experts in gender equality and non-discrimination found that over half of the jurisdictions surveyed have already introduced a socio-economic status ground of some sort in their national legislation. Perhaps partly as a result of the economic crisis and the growing number of people at risk of poverty, in some jurisdictions socio-economic grounds already have a similar relevance to other, traditional discrimination grounds. Equinet reports and reports from individual equality bodies testify that these grounds are increasingly invoked and tested in front of the courts and tribunals and they provide effective protection to groups that otherwise would have few tools and opportunities to fight their social exclusion.

58 <http://www.ihrec.ie/your-rights/what-is-equality/equality-and-non-discrimi2.html>

59 The Equality Authority (2002) Review of Discriminatory Grounds Covered by the Employment Equality Act 1998: An Equality Authority Position, Dublin: Equality Authority, p.5.

60 Department of Justice, Equality and Law Reform (2004) op. cit., page xiii.

61 Section 13(b) of Equality (Miscellaneous Provisions) Act 2015

62 Loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination (dite loi « antidiscrimination »)

63 <http://unia.be/en/grounds-of-discrimination/other-criteria-of-discrimination#Wealth> (UNIA's website does not give a definition for social origin.)

64 Centre interfédéral pour l'égalité des chances (2015), "Rapport annuel 2014 - Une année charnière qui ouvre plusieurs portes", Brussels, Centre interfédéral pour l'égalité des chances, page 22, 36 and 60

65 Equinet (2015), op. cit., page 15

66 http://www.equineteurope.org/IMG/pdf/PROFILE_CPD_BG.pdf, accessed on 4 June 2016

67 Commission for Protection against discrimination (2015), "Annual Report 2014", Sofia, Commission for Protection against Discrimination

68 Office of the Ombudsman (2015), "Summary report of the Ombudsman for 2014", Zagreb, p. 15, 17 and 20

69 <http://www.senat.fr/dossier-legislatif/ppl14-378.html>

70 Diana Faujour Skelton with Anne-Sylvie Laurent and Marie-Ange Libert (2016), "Artisans of Peace Overcoming Poverty Volume 2: Defending Human Rights", Pierrelaye (France), ATD Fourth World, page 87-96

71 'An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.'

72 <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome> (accessed on 4 June 2016)

73 Equal Treatment Authority (2015), "Report on the activity of the Equal Treatment Authority in 2014 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities", Budapest, Equal Treatment Authority, page 75

74 Equinet (2015), op. cit., page 14

75 Information presented by the Commissioner for Fundamental Rights of Hungary to the twenty-ninth session of the UN Human Rights Council, 12 June 2015 (HRC/29/N1/1)

76 Equality Commission for Northern Ireland (ECNI) (2014), "Addressing socio-economic disadvantage: Review and update", ECNI, <http://www.equalityni.org/ECNI/media/ECNI/Publications/Corporate/Commission%20Meetings/2014/cmeeting250614/EC-14-06-2.pdf> (accessed on 4 June 2016)

77 Equinet (2015), op. cit., page 13

78 Particularly in British Columbia, the Northwest Territories, Ontario, Prince Edward Island, Québec, and Saskatchewan

79 Department of Justice, Equality and Law Reform (2004) op. cit., page 69-91

80 British Columbia Human Rights Tribunal (2014) and (2015), "Annual Report 2013-2014" and "Annual Report 2014-2015", Vancouver, British Columbia Human Rights Tribunal

81 http://www.ohrc.on.ca/en/code_grounds/receipt_public_assistance

82 Northwest Territories Human Rights Commission (2015), "Celebrating ten years of human rights, Annual Report 2014-2015", Yellowknife, Northwest Territories Human Rights Commission, p. 20.

83 WCB v. Mercer (2014), 569 A.R. 153; 606 W.A.C. 153 (NWTCA) (Workers' Compensation Board (N.W.T. and Nunavut) v. Mercer et al.)

84 Department of Justice, Equality and Law Reform (2004) op. cit., page 81-85

85 http://www.cdpcj.qc.ca/Publications/RA_2014_2015.pdf

86 <http://www.cdpcj.qc.ca/fr/medias/Pages/Communique.aspx?showitem=632>

7. Defining a socio-economic status ground

International treaties as well as national legislation in different countries use a number of different categories that could be understood as socio-economic status grounds. Such categories encompass but are not limited to socio-economic status, social origin, social status, social position, social condition, social class, wealth, income, property, economic situation, financial status, unemployment, or education. Legislators intending to introduce a socio-economic status ground need to first identify the category most suitable to their objectives and the socio-economic situation in the country. Protection might be extended to a broader, more comprehensive category or it might be limited to a specific angle of the disadvantage, such as education or unemployment.

Many countries stipulating a socio-economic status ground do not provide a specific definition for the ground. However, given the number of different categories used it is advisable to offer a definition or a number of indicators to avoid incertitude. The 2004 report in Ireland lists a number of possible key indicators to define socio-economic status, such as level of education, level of literacy, homelessness, geographical location, source and level of income, type of work or profession, and employment status. These indicators are still valid and can be used in defining this ground. The Irish Equality Authority's Position Paper in 2002 suggested using a number of indicators to define the different levels of socio-economic status, including family background, geographical location, home ownership, educational background, and economic situation⁸⁷.

In Canada, Section 1 of the Northwest Territories Human Rights Act defines social condition in an asymmetric fashion as 'the condition of inclusion of the individual, other than on a temporary basis, in a socially identifiable group that suffers from social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or any other similar circumstance'. The Québec Charter of Human Rights and Freedoms does not define social condition, but the Québec Commission des droits de la personne et des droits de la jeunesse defines it as the situation in society due to one's income, occupation or level of education. Importantly, this definition is non-asymmetrical and it also includes temporary conditions such as unemployment.

In Britain, the Equality Act 2010 introduced a public sector equality duty on the ground of socio-economic disadvantage. While the provision did not enter into force, it illustrates an asymmetric approach to the socio-economic status ground. The ground is not defined in the Act but the Explanatory Notes state that the aim is to reduce inequalities associated with socio-economic disadvantage that could include inequalities in education, health, housing, crime rates, or other matters associated with socio-economic disadvantage⁸⁸.

It is suggested that the definition of a socio-economic status ground could be built by taking into account all the above elements to ensure that it follows an asymmetric approach and enables a situation-specific analysis, responding to disadvantages in the fields of:

- Economic and financial means,
- Education,
- Employment,
- Family background,
- Health,
- Housing, including the geographic location, and
- Social class.

The situation-specific analysis should examine all the areas to make an assessment. However, these elements are not cumulative, a strong disadvantage in only one of these fields would already suffice to prove a disadvantaged socio-economic status in a given case.

87 The Equality Authority (2002), op. cit., page 5.

88 Equality Act 2010 Explanatory Notes, Commentary on Section 1, <http://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/1>, accessed on 4 June 2016

8. Arguments for and against a socio-economic status ground

In the literature and in countries where the introduction of a socio-economic status ground was proposed, a number of arguments and counter-arguments have been discussed⁸⁹.

The opposing side suggests that socio-economic status ground lacks in specificity and it does not protect a particular group but rather all individuals in society. This might be a legitimate concern if socio-economic status is not well-defined in legislation. However, the potential 'dilution' of the anti-discrimination framework can be avoided if the ground is well-defined and geared towards protecting those that suffer discrimination clearly on the ground of their socio-economic disadvantage.

In a similar fashion, others go on to argue that it is very difficult to define socio-economic status and this would give courts an overly wide discretion. This argument has also been raised against some 'traditional' grounds, such as age or disability, yet the courts found effective ways to interpret and use them. Arguably, courts might well be able to also deal with the concept of socio-economic status, provided that this ground is adequately defined and allowing for a situation-specific analysis.

It is also often pointed out that, as opposed to other discrimination grounds, socio-economic status is not an immutable characteristic. On the one hand, this argument does not hold in jurisdictions operating an open list of grounds and/or naming grounds that are typically not seen as immutable, such as, for example, part-time nature of the employment⁹⁰. On the other hand, the 2004 report in Ireland observes that many studies show how poverty and social exclusion are passed on from one generation to the next and therefore concludes that socio-economic status and social origin are closer to being immutable than one might expect⁹¹.

Others argue that socio-economic status is not a legal, but rather a policy issue and it is for government policies and not legislation to tackle disadvantages related to one's poverty or socio-economic status. This argumentation represents a traditional charity-based model and approach to poverty and social exclusion. Putting aside the fact that this charity model has proved painfully inadequate to respond to the effects of the global economic crisis, it also ignores the principled need for a rights-based approach. Moreover, this need not be a zero-sum game between the charity model and the rights-based model. Both social policy measures and, in addition, legal protection are clearly necessary to respond to the increased number of persons living in poverty and social exclusion and their needs.

The list of arguments in favour of a socio-economic status ground ought to start with the international treaty obligations, described above, requiring Ireland to provide protection against discrimination on grounds relating to socio-economic status, such as social origin, birth, and property.

People living in poverty, social exclusion and generally in a disadvantaged socio-economic status are a particularly vulnerable group with limited access to justice and rights. This is due to their limited economic means as well as due to the social exclusion itself. Poverty and social exclusion creates barriers to equal opportunities that a socio-economic status ground would have the potential to offer some counterbalance by providing protection against discrimination based on such status.

Socio-economic status is often combined with other grounds of discrimination, such as race and ethnic origin, disability, or age. This multiple discrimination aggravates the situation of certain groups and it means that certain situations and disadvantages are difficult to fully understand and respond to without taking socio-economic status into account. Litigating the case on any other ground necessarily hides the socio-economic nature of the discrimination. In cases where socio-economic status is a decisive factor, taking the case as an ethnic discrimination or disability discrimination claim risks weakening the case itself and leaving some members of the disadvantaged socio-economic group without adequate protection.

The existence of a socio-economic status ground would in itself promote the acceptance of a more sophisticated approach to intersectionality and multiple discrimination⁹². However, it is important to note that cases where a socio-economic status ground is combined with other grounds represent only a part of all the socio-economic discrimination cases. There are many ‘stand-alone’ cases of socio-economic discrimination, particularly in the field of employment and the provision of housing and accommodation.

Jurisprudence and case law in countries where a socio-economic status ground already exists clearly demonstrates the practical use of this ground. The number of cases on this ground is significant, particularly in certain fields such as housing and employment, where they feature among the grounds most often raised in claims. The research into the perception of discrimination incidents conducted in Hungary shows that socio-economic status features among the most often reported grounds of discrimination⁹³. This underlines that there are situations where people in a disadvantaged socio-economic status face clear discrimination and where the ‘traditional’ discrimination grounds do not provide adequate protection to them.

There is an intrinsic link between poverty and social exclusion and discrimination. Certain groups in society, such as minority ethnic groups, religious minorities, women, or persons with disabilities experience this as their daily reality. EU policy documents have already recognized and responded to this, by addressing the fight against gender or racial discrimination together with the fight against the socio-economic disadvantage of these groups⁹⁴.

Discrimination on any ground represents a violation of rights, impeding full and effective participation in society. In particular, it limits chances to secure quality education and healthcare, employment matching one’s skills, or adequate housing and it often results in a disadvantaged social and economic situation and status. On the other hand, disadvantaged socio-economic status dramatically increases the chances of being discriminated against in all fields of life. Persons living in poverty, or in ‘poor neighbourhoods’, unemployed, or persons relying on social protection experience discrimination based on their socio-economic status, creating a vicious circle that is difficult to escape and perpetuating their disadvantaged status. Some of these instances of discrimination can only be tackled effectively using a socio-economic status ground.

There are clear links between the human rights issues and the equality issues raised by disadvantaged socio-economic status. Socio-economic disadvantage by its very nature impedes full and equal access to all human rights and in particular to economic and social rights. Persons experiencing socio-economic disadvantages face a number of human rights violations, including their right to education, right to adequate housing or right to work. These human rights violations are exacerbated by the discriminatory treatment such groups also face. A socio-economic status ground in equality legislation thus also supports and enables a more holistic response to socio-economic disadvantages, involving both human rights and equality-based arguments and actions. This is particularly significant in a context where the equality body also has a wider human rights mandate acting as a National Human Rights Institution, as it stimulates such comprehensive responses to socio-economic disadvantage within one institution.

89 See in particular the debates in Canada, described in Department of Justice, Equality and Law Reform (2004) op. cit., page 87-91

90 See Article 8.r. of the Hungarian Act on equal treatment and the promotion of equal opportunities

91 Department of Justice, Equality and Law Reform (2004) op. cit., page xxi.

92 Department of Justice, Equality and Law Reform (2004) op. cit., page xiii.

93 Equal Treatment Authority (2015), “Report on the activity of the Equal Treatment Authority in 2014 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities”, Budapest, Equal Treatment Authority, page 75

94 See e.g. EU Framework for National Roma Integration Strategies up to 2020 and Strategic Engagement for Gender Equality 2016-2019

9. Conclusion

This paper set out to take stock of the existence and use of a socio-economic status ground in equality law and policies twelve years after the publication of the report assessing new discrimination grounds in Ireland.

It found that the past decade has seen an increased policy and academic focus on socio-economic inequalities, acknowledging also the multiple links between poverty and social exclusion and discrimination. Discrimination on a socio-economic status ground has grown in importance in both human rights and equality law, with an increasing number of jurisdictions and international instruments prohibiting it and with a growing case law from courts and tribunals. Experience from abroad suggests that it is possible to convincingly answer, sometimes justified hesitation and opposition to introducing a socio-economic status ground and that there are important gains to be realised by doing so.

These developments since the first Irish report on this issue could provide a useful impetus to reconsider introducing a socio-economic status ground into Irish equality legislation, based on the learning from relevant international and national instruments and making use of the interpretation provided by numerous international and national courts.

Both academic literature and practical experience suggest that framing socio-economic status as a ground providing asymmetrical protection is advisable. Providing this protection exclusively to persons in a disadvantaged socio-economic situation appears to be a necessary and reasonable limitation as persons enjoying a privileged socio-economic status would rarely need specific protection against discrimination on this ground. The asymmetrical construction of the ground is also helpful to prevent abuse and to counter the arguments suggesting that socio-economic status is too wide a category potentially providing protection to all individuals.

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