



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

6 January 2015

Case Document No. 1

European Organisation of Military Associations (EUROMIL) v. Ireland
Complaint No.112/2014

COMPLAINT

Registered at the Secretariat on 4 November 2014



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To the Executive Secretary of the European Committee of Social Rights

Brussels, 4 November 2014

EUROMIL against Ireland

Complaint

The collective complaint launched by the European Organisation of Military Associations ("EUROMIL") against Ireland deals with the fact that Defence Forces representative associations in Ireland do not have full trade union rights including the right to join an umbrella organisation.

Summary

EUROMIL launches a collective complaint against Ireland to grant full trade union rights for Defence Forces representative associations in Ireland and more specifically the organisation Permanent Defence Forces Other Ranks Representative Association (PDFORRA).

Defence Forces Representative associations in Ireland are not allowed to join an umbrella organisation such as ICTU (Irish Congress of Trade Unions, the Irish umbrella organisation to which trade unions in Ireland affiliate). This means that the Defence Forces representative associations are kept out of the overall national negotiations that ICTU conduct on behalf of their members, such as those on salaries in the public service.

Articles violated are articles 5 and 6 of the European Social Charter (ESC).

Admissibility

Ireland ratified the Revised European Social Charter on 4 November 2000, and the Revised European Social Charter entered into force in respect of Ireland on January 1, 2001. Ireland also ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints on 4 November 2000.

EUROMIL is a European non-governmental organisation which has participatory status with the Council of Europe. It is included in the list established by the Governmental Committee of international non-governmental organisations



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entitled to lodge complaints under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

The European Organisation of Military Associations (EUROMIL) promotes the social and professional interests of military personnel of all ranks in Europe. The Organisation is the primary Europe-wide forum for co-operation among professional military associations on issues of common concern. EUROMIL is the umbrella organisation of 43 [national military associations and trade unions](#).

Originally founded in 1972, the Organisation includes 28 countries from the Russian Federation in the East to Ireland in the West, and from Finland in the North to Cyprus in the South; EUROMIL is a truly European organisation.

Background Ireland:

The conduct, conditions and service of all Irish Defence Force personnel is governed by the Defence Act 1954 (as amended). PDFORRA, the Association representing Enlisted Personnel of the Defence Forces was established in 1990 under the Defence (Amendment) Act 1990 by virtue of the terms of Defence Force Regulation S.6., passed pursuant to said legislation.

According to the Defence Act, the Defence Forces representative associations operate as professional associations but have never been allowed to become trade unions ("trade union status").

From the Defence Act:

"2. —(1) Subject to section 3 of this Act, the Minister may provide by regulations for the establishment of an association or associations (in this Act referred to as an "association") for the purpose of representing members of such rank or ranks of the Defence Forces as may be specified in the regulations in relation to matters affecting their remuneration and such other matters as the Minister may specify in the regulations, but excluding matters relating to any operation and the raising, maintenance, command, constitution, organisation and discipline of the Defence Forces under the Principal Act and offences in relation to the Defence Forces and military property under that Act.

(2) An association shall represent under subsection (1) of this section only members of the association."

However, the Act further provides that:

"(3) An association shall be independent of and shall not, without the consent of the Minister, be associated with or affiliated to any trade union or any other body."



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Moreover,

"(4) A member shall not become or be a member of a trade union, or of any other body (other than an association), which seeks to influence or otherwise be concerned with the remuneration or other conditions of service of members.

(5) The Minister shall determine any question that arises as to whether any trade union or any other body is a trade union or body to which subsection (4) of this section applies."

Defence Force Regulation S.6 further provides at paragraph 28 thereof:

"The Association shall not sponsor or resort to any form of public agitation as a means of furthering claims or for any other purpose whatsoever."

Further, said Defence Force Regulation at paragraph 27 thereof restricts communication with media and other organs of public opinion, with reference also made to prohibitions contained in Defence Force Regulations A.7, paragraphs 27 to 33 (inclusive) thereof.

The Industrial Relations Act 1990 at section 8 thereof defines "worker" as not including, inter alia, a member of the Defence Forces, thereby effectively disentitling absolutely that category of "worker" from the various rights and entitlements flowing from provisions thereof with regard to trade disputes and so forth.

Additionally, the Defence Amendment Act 1990 outlines that:

"(6) The Minister may provide by regulations for the establishment of a system of conciliation and arbitration in respect of such matters, in relation to which an association represents members, as the Minister may specify in the regulations."

<http://acts2.oireachtas.ie/zza6y1990.1.html#zza6y1990>

Following the passing into law of the Defence (Amendment) Act 1990, the Minister for established a Conciliation and Arbitration Scheme pursuant to Defence Force Regulation S.6.

The purpose of this scheme is to provide means acceptable to the parties for the determination of claims and proposals relating to the remuneration and conditions of service, within the scope of the scheme, of members of the Permanent Defence Force of the ranks represented by the Representative Associations.

However, it is PDFORRA's contention that this system is not working as it should. Decisions get postponed perpetually or issues are never resolved. Moreover, the



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Minister can, following consultation with Government, under the rules of the Scheme, simply refuse to accept the negotiated agreement/ adjudicated ruling¹.

Additionally, the negotiation body chairman is an employee of the Department of Defence and therefore is perceived not to be independent in the broad sense. Further, the Defence Forces Scheme provides that any form of public agitation by a Representative Association in furthering a claim may cause for the scheme to be suspended.

Another scheme exists called The "LRC process" (Labour Relations Commission), which according to PDFORRA, is a fairer and more independent system.

In this process, a professional external chairman assists employers and their employees to resolve disputes when their efforts to do so have not succeeded. The process can be described as a facilitated search for agreement between disputing parties.

The LRC assigns a mediator, known as an Industrial Relations Officer, who acts as an independent, impartial chairperson in discussions and negotiations between the negotiating teams that represent the employer and the employees.

The LRC service is available to all employees except those specifically excluded by law, namely the Defence Forces, Gardai and prison services.

http://www.lrc.ie/ViewDoc.asp?fn=/documents/work/conciliation_service.htm

Presently the Defence Forces representative associations in Ireland do not have access to Labour Court or the Labour Relations Commission.

The Defence Forces representative associations are not allowed to join an umbrella organisation namely the ICTU (Irish Congress Trade Unions, the Irish umbrella organisation to which trade unions in Ireland affiliate). This means that the Defence Forces representative associations are kept out of the overall negotiations that ICTU conduct on behalf of their members, such as those on salaries.

However, Defence Forces representative associations have been given the right to join organisations such as EUROFEDOP and EUROMIL.

Violation of the European Social Charter

Articles violated are article 5 and 6 of the European Social Charter (ESC).

Aim of Collective Complaint:

Trade union status for Defence Forces representative Associations.

¹Scheme providing for Conciliation and Arbitration Part 1, Section 3



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This includes:

a. Right to affiliate to national umbrella organisation (ICTU).

Arguments

1. EUROMIL claims that the Military Representative Associations are denied the possibility to join national umbrella organisations of employees, such as the Irish Congress of Trade Unions ("ICTU").
2. Pursuant to section 2 of the Defence (Amendment) Act 1990 a Military Representative Association must be independent of and shall not, without the consent of the Minister, be associated with or affiliated to any trade union or other body. Further, member of such Representative Association shall not become or be a member of a Trade Union, or of any other body (other than an Association) which seeks to influence or otherwise be concerned with the remuneration or other conditions of service of members.
3. According to section 2(3) and 2(5) the Minister for Defence is entitled to determine any question arising in relation to those categories of trade union or other bodies which may be deemed a trade union or body in respect of whom a member is prohibited from joining.
4. EUROMIL claims that, pursuant to this legislation, Military Representative Associations are denied membership of ICTU and are thus not able to attend the National Negotiations ICTU conducts on, inter alia, the salaries within the public service.
5. EUROMIL considers the prohibition against Military Representative Associations from joining ICTU as a fully arbitrary one in nature.
6. PDFORRA sought the consent of the Minister for Defence to be affiliated to ICTU which consent of the Minister was not forthcoming.
7. It is asserted that Article 5 requires that domestic legislation, regulation or administrative practice must not impair the freedom of workers from either forming or joining their respective national or international organisations. While this requirement applies to all employees, same is followed by an exception clause concerning, inter alia, the Military. It is further conceded that Ireland may choose to regulate the right of the Military to organise by a mechanism applicable only to the Military. However, such entitlement may not deprive Military representative associations from expressing their demands on working conditions and pay



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in an appropriate and effective manner. It has been observed by the European Committee of Social Rights that national umbrella organisations of employees have been observed to often possess more significant bargaining power in national negotiations. Arising from this, their membership may amount to one of the primary means of conducting pay negotiations. It is submitted that this is all the more important for an organisation operating under several restrictions on its trade union rights.

8. The Military Representative Associations, and more specifically PDFORRA has both been denied trade union status and excluded from the scope of the right to strike. Accordingly, it is submitted that it is imperative to maintain the remaining trade union prerogatives of the Associations as fully as possible.
9. It is submitted that despite the alternative negotiation mechanisms under conciliation and arbitration which have been made available to Military personnel, a further and more specific justification is required for excluding the means to effectively negotiate through national umbrella organisations. It is respectfully submitted that a prohibition in principal runs contrary to the guarantees enshrined in Article 5 which can be validly applied only when such meets the preconditions of a permissible restriction and can be shown to be objectively justified.
10. It may be submitted by Ireland that preventing Military representative organisations from joining national umbrella organisations and being represented by them in national negotiation is necessary as the umbrella organisations are not obliged to take into account the specificities pertaining to public safety. No concrete example can be given of this concern being a problem in any context. Further, there is no reason why issues of public safety cannot be discussed in the course of national negotiations by the government and Military representatives, should the latter be members of a national umbrella organisation, such as ICTU. Accordingly, it is submitted that a prohibition on Military associations from becoming members of a national organisation of trade unions has no inherent connection with enhancing public safety and other important public interests within the meaning of Article 5.
11. It is submitted that the impartiality of the Military will not in any way be affected by its membership of a national umbrella group alongside other civil servants who are likewise required to fulfil public service obligations in a strictly impartial manner.
12. It is respectfully submitted that the contested restriction is not proportionate as it exploits in an undue manner the difference between



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Military association and trade unions established under national legislation as the restriction has the factual effect of depriving Military representative associations of the most effective means of negotiating the conditions of employment on behalf of their members. Accordingly, it cannot be considered as a proportionate measure for achieving its purposes.

13. It is submitted that a violation of Article 5 exists in respect of the current prohibition against Military representative associations and more specifically PDFORRA from joining national employees organisations.

b. Right to fair pay agreement discussions breach of Article 6 (2)

Arguments

1. EUROMIL argues that Military representative associations are unable to take part in national pay agreement discussions, in violation of Article 6 of the Charter and that they have no bargaining rights with regard to general pay increases, same being negotiated by ICTU on behalf of all public servants.
2. Despite the fact that members of Military representative associations may not join ICTU, the negotiated outcome is binding upon members of Military representative associations.
3. A separate agenda is drafted for the Military representative associations and is dealt with by way of parallel process which the Military representative associations have effectively no official input.
4. It is not accepted by EUROMIL that the Conciliation & Arbitration Scheme is in any way sufficient to deal with those issues coming within direct pay agreement discussions. If Military representative associations were to seek a general increase through the scheme, it would have to make a claim for a pay increase through its mechanisms. This alternative would not be effective in practice as the claim would be answered in the negative by referring to the general pay agreement discussions.
5. It is submitted by EUROMIL that the scheme is a slow mechanism whereby postponement of claims affect the length of the negotiations and, in any event, the Minister for Defence is not obliged to accept the negotiated outcome as a consequence of which many disputes are either not moving towards resolution or are left unresolved altogether. Further, several claims in relation to matters concerning allowances, accommodation, promotion etc. have taken some considerable time to process and up to many years. Further, the scheme is chaired by a civil servant employed by the Minister for Defence and is not therefore ultimately to be regarded, on a broad basis, as an independent and impartial mechanism. The Labour



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Relations Commission, on the other hand, is chaired by an external chair person.

6. Most civil servants have access to the Labour Relations Commission and to the Labour Court which are commonly used for dispute resolution. Certain categories have nonetheless been excluded by the law from their scope, to include the Military. EUROMIL maintains that the LRC would be a fair and more independent dispute resolution mechanism and considers that the requirements of article six would be fulfilled, should the Military be granted access to the LRC and the Labour Court.
7. It is submitted that there is nothing in the wording of Article 6 of the Charter entitling the State to enact restrictions on the right to bargain collectively on the part of the Military in particular. This Article differs from Article 5 in that regard.
8. In Ireland, the public service agreements are the mechanisms through which the general issues relating to conditions of service of the Military are factually negotiated. Such agreements are collective agreements made at national level arising from which the parties thereto agree to make or process no "cost increasing claims by trade unions or employees for improvements of pay or conditions of employment".
9. It is therefore submitted by EUROMIL who argues that, on that basis, the Military representative associations have not been granted direct access to these negotiations even though the results are subsequently applied also to members of the Military.
10. Data is available in respect of the claims lodged through the scheme where it can be seen that length of proceedings under the scheme invariably effect the evaluation of efficiency under Article 6 of the Charter. It will be seen that the factual collective bargaining on pay is not conducted within the scheme and further the mechanisms made available for the purposes of pursuing pay claims through the scheme are time consuming and offer possibilities of a pending claim being halted and being left unresolved. On that basis the scheme does not constitute a sufficiently effective alternative for collective bargaining conducted at public service agreement negotiations.
11. Under Article 6(2) the State is obliged to promote machinery for voluntary negotiations and it is submitted that the practical exclusion of the Military from the scope of direct pay negotiations is neither necessary nor appropriate within the meaning of the provision. It is submitted that it is imperative to regularly consult with all parties during a process of collective bargaining and therefore any parallel discussions or mere hearing of a Military representative association on a negotiated outcome does not satisfy the requirements of efficiency inherent in Article 6(2) of the Charter.



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12. Trade Union rights of a Military representative association have been restricted in Ireland and accordingly it is submitted that it must maintain its ability to argue on behalf of its members through at least one effective mechanism. Accordingly, in order to satisfy this requirement, the mechanism of collective bargaining must be such as to genuinely provide for a possibility of a negotiated outcome in favour of a workers side. It is submitted that a situation where a chairman is an employee of one of the negotiating parties only serves to further enforce the perception of the inefficiency of the existing negotiating mechanism under Article 6(2). Further, it is submitted that in respect of the possibility of Military representatives associations accessing the Labour Relations Commission and the Labour Court, access to a particular dispute resolution mechanism cannot be required for the fulfilment of the requirements of Article 6. While such mechanisms may exist, they are not a substitute for the need to make available to Trade Unions or representative associations an effective recourse to a dispute resolution body for the pursuance of joint interests of their members.
13. It is therefore submitted that the legislation and practice in Ireland fails to ensure the sufficient access of Military representative associations and more specifically PDFORRA into pay agreement discussions giving rise accordingly to violation of Article 6(2) of the Charter.

c. Right of collective action

Arguments

1. EUROMIL argues that the prohibition against the right to strike of Military representative associations amounts to a violation of the right to collective action under article 6(4) of the Charter.
2. It is accepted that the prohibition in respect of the right to collective action by way of strike is prescribed by law. However, it is not accepted that there is a legitimate aim in respect of this prescription by law. The legitimate aim is presumably trying to ensure that strike action by the Military does not endanger national security.
3. It is submitted that the right to strike is intrinsically linked to the right to collective bargaining as it represents the most effective means to achieve a favourable result from a bargaining process. It is therefore of specific relevance and consequently restrictions in this right may be acceptable only under specific circumstances and conditions.
4. It is submitted that there lacks any concrete pressing social need for absolute restriction in respect of collective action. It is submitted that there can be no justification that the legitimate purpose of maintaining



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national security may not be achieved by establishing restrictions on the exercise of the right to strike (such as requirements relating to the mode and form of industrial action) rather than imposing an absolute prohibition.

5. From that perspective, section 8 of the Industrial Relations Act 1990 not only amounts to a restriction but to an absolute abolition of the right to strike. It is submitted that restrictions on human rights must be interpreted narrowly. As a consequence, in the context of regulation of the collective bargaining rights of members of the Military, States must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action.
6. Accordingly, it is submitted that the margin of appreciation of a member State is restricted because the abolition of the right to strike effects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness. Accordingly, it is submitted that the relevant statutory provision herein, namely section 8 of the 1990 Industrial Relations Act is not proportionate to the legitimate aim pursued and, accordingly, is not necessary in a democratic society such as Ireland. Accordingly, it is respectfully submitted that the prohibition of the right to strike of members of the Military amounts to a violation of Article 6(4) of the Charter.

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