

Resolution CM/ResChS(2018)2 European Organisation of Military Associations (EUROMIL) v. Ireland Complaint No. 112/2014

*(Adopted by the Committee of Ministers on 10 April 2018
at the 1313th meeting of the Ministers' Deputies)*

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint registered on 4 November 2014 by the European Organisation of Military Associations (EUROMIL) against Ireland;

Having regard to the report by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- **by 11 votes to 2, that there is a violation of Article 5 of the Charter;**

Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations (European Council of Trade Unions (CESP) v. France, Complaint No. 101/2013, decision on the merits of 27 January 2016, §84).

Although the right guaranteed in Article 5 is the right of individuals to form and join trade unions, Article 5 provides that workers must be free to form local, national or international organisations. This implies, for the organisations themselves, the right to establish and join federations. National umbrella organisations of employees may be observed to often possess more significant bargaining power in national negotiations, which is why their membership may amount to one of the primary means of conducting pay negotiations. This is all the more relevant for an organisation operating under several restrictions on its trade union rights (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on admissibility and merits of 2 December 2013).

Ireland allows members of the armed forces to form and join professional associations subject to restrictions prescribed by law. The government maintains that preventing military representative associations from joining national umbrella organisations is necessary on the basis that it would be irreconcilable with the unique nature of military service and its role in maintaining national security and public order, public health, morals and freedom of others.

¹ In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

However, it has not been established why issues of public safety, national security etc. cannot be discussed in the course of national negotiations by the government and military representative associations, should the latter be members of a national umbrella organisation, such as the Irish Congress of Trade Unions (ICTU) in the Irish context. According to EUROMIL, ICTU has stated that the Permanent Defence Force Other Ranks Representative Association (PDFORRA) could be affiliated to ICTU with whatever conditions the government deemed necessary and that this remains the position of ICTU.

A complete ban on affiliation is not necessary or proportionate, in particular as the restriction has the factual effect of depriving the representative associations of an effective means of negotiating the conditions of employment on behalf of their members, in so far as ICTU possesses significant bargaining power in national negotiations.

- *unanimously that there is a violation of Article 6§2 of the Charter;*

The extent to which ordinary collective bargaining applies to officials may be determined by law. Officials nevertheless always retain the right to participate in any processes that are directly relevant for the determination of procedures applicable to them (Conclusions III, (1973) Germany, CESP) v. Portugal, Complaint No. 11/2001, decision on the merits of 21 May 2002, §58). A mere hearing of a party on a predetermined outcome will not satisfy the requirements of Article 6§2 of the Charter. On the contrary, it is imperative to regularly consult all parties throughout the process of setting terms and conditions of employment and thereby provide for a possibility to influence the outcome.

Ireland has enacted a conciliation and arbitration scheme ("the Scheme"), and also put in place other arrangements aimed at ensuring that the Representative Association of Commissioned Officers (RACO) and the Permanent Defence Force Other Ranks Representative Association (PDFORRA) can exercise collective bargaining within the meaning of Article 6§2 of the Charter.

The public service agreements are the mechanisms through which the general issues relating to conditions of service of the armed forces, notably pay, are in fact negotiated.

Military representative associations are consulted in a parallel process to the public service agreements, they are not however directly involved in the negotiations as they are not affiliated to the Irish Congress of Trade Unions. Little information has been provided on this parallel process and how it effectively ensures meaningful consultation as opposed to a mere hearing. It is not clear that the military representative associations are meaningfully consulted over pay during discussions on public service agreements. Agreements over pay are laid down in public sector agreements, to which representative military associations do not have direct access, and the representative military associations may not raise claims in respect of pay within the scheme as pay is settled by the public service agreements, and these typically do not allow cost-increasing claims by trade unions of employees for improvements in pay or conditions of employment.

No information has been provided as to why the practical exclusion of the armed forces from the scope of direct pay negotiations is necessary within the meaning of Article G of the Charter, nor why such a near total exclusion could be considered as proportionate. The nearly total exclusion of the representative military organisations from direct negotiations concerning pay cannot be considered as necessary under Article G of the Charter.

Having regard to the essential role of pay bargaining for the purposes of Article 6, the situation fails to ensure sufficient access of military representative associations to pay agreement discussions.

- *by 9 votes to 4, that there is no violation of Article 6§4 of the Charter;*

The question is whether a prohibition on the right to strike by members of the armed forces, as a means of pursuing a legitimate aim such as those outlined in the previous paragraph, is necessary in a democratic society.

Most Council of Europe member States prohibit members of the armed forces from striking. Therefore, and having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, the potential that any industrial action could disrupt operations in a way that threatens national security, there is a justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act. The statutory provision is proportionate to the legitimate aim pursued and, accordingly, can be regarded as necessary in a democratic society.

Having regard to the information communicated by the Irish delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 18 January 2018 (see Appendix to the resolution),

1. takes note of the commitment of the Irish Government to bring the situation into conformity with the Charter and the information it has communicated in this regard (see Appendix to this resolution);
2. looks forward to Ireland reporting, at the time of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, on any new developments regarding their implementation.

Appendix to Resolution CM/ResChS(2018)2**Address by the Representative of Ireland at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 18 January 2018****European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014**

1. Ireland has given full consideration to the report of the European Committee of Social Rights (ECSR) of 12 September 2017, in relation to the complaint above.
2. Ireland welcomes the finding that there is no violation of Article 6(4) of Charter.
3. In respect of the finding of a violation of Article 5 of the Charter, Ireland notes that paragraph 55 of the ECSR Report to the Committee of Ministers references a statement by EUROMIL which claims that ICTU has stated that PDFORRA could be affiliated to ICTU with whatever conditions the government deems necessary. This is a position which has not been articulated directly by ICTU to the Department of Defence.
4. The Department of Defence intend to make contact with ICTU in the course of a forthcoming review of the Conciliation and Arbitration Scheme for members of the Permanent Defence Force, to explore this possibility.
5. In relation to Article 6(2) of the Charter, the right to bargain collectively, the Irish Government established an independent Public Service Pay Commission in 2016, which was tasked with providing objective analysis and advice on the most appropriate pay levels for the public service, including the Defence Forces.
6. Similar to all other public sector unions, the Permanent Defence Force Representative Associations, (i.e. PDFORRA who represent enlisted personnel and RACO who represent Commissioned Officers) were invited to make a submission to the Commission. The submissions were considered in the development of the subsequent report prepared by the Commission.
7. Following publication of the report of the Commission on 9 May 2017, the Irish Government commenced negotiations on a new national public sector pay agreement.
8. It should be noted that while there was parallel negotiations with the Permanent Defence Force Representative Associations at previous national pay talks, this was not the case during the most recent pay talks in 2017. The Permanent Defence Force Representative Associations were invited to participate in these negotiations and were afforded equal standing with members of ICTU throughout the process, which was facilitated by the Workplace Relations Commission².
9. The Permanent Defence Force Representative Associations attended and participated at all plenary sessions which included public sector trade unions, representative associations and management.
10. The issues raised by the Representative Associations were considered in tandem with those raised by other public sector representative associations and trade unions.
11. The pay talks culminated in a new agreement which contains increases in pay ranging from 6.2% to 7.4% over the lifetime of the agreement, from 2018 to 2020, with the larger percentage increases focussed on the lower paid.

² The Workplace Relations Commission is an independent, statutory body which was established on 1 October 2015 under the Workplace Relations Act 2015. The Workplace Relations Commission has responsibility for

- promoting the improvement of workplace relations, and maintenance of good workplace relations,
- promoting and encouraging compliance with relevant enactments,
- providing guidance in relation to compliance with codes of practice approved under Section 20 of the Workplace Relations Act 2015,
- conducting reviews of, and monitor developments as respects, workplace relations,
- conducting or commissioning research into matters pertaining to workplace relations,
- providing advice, information and the findings of research conducted by the Commission to joint labour committees and joint industrial councils,
- advising and apprising the Minister in relation to the application of, and compliance with, relevant enactments, and
- providing information to members of the public in relation to employment

The Commission has a board consisting of a chairperson and 8 ordinary members appointed by the Minister for Business, Enterprise and Innovation.

12. The proposals arising from the negotiations have been accepted by ballot of the members of the Permanent Defence Force Representative Associations.
13. Ireland wishes to advise the Committee that a review of the Conciliation and Arbitration (C&A) scheme for members of the Permanent Defence Force will be conducted in 2018. The review will consider matters such as the developments in the broader public sector pay negotiation processes and their implications for the Defence Forces C&A Scheme.
14. Ireland remains ready to update the Committee of Ministers on future developments, in the context of the annual reporting mechanisms on compliance with the provisions of the European Social Charter (Revised)."