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EUROPEAN SOCIAL CHARTER

Comments on the 18th National Report of Ireland on the
implementation of the European Social Charter
submitted by

THE EUROPEAN ORGANISATION OF MILITARY ASSOCIATIONS AND TRADE UNIONS (EUROMIL)

Follow-up to collective complaint:
No. 112/2014

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Submission by the European Organisation of Military Associations and Trade Unions (EUROMIL) on the 18th National Report of Ireland on the implementation of the European Social Charter

Follow-up of the Complaint 112/2014: EUROMIL v. Ireland

Introduction

EUROMIL, on behalf of PDFORRA, welcomes this opportunity to update the European Committee of Social Rights (ECSR – or here below referred to as the Committee) on developments, or lack thereof, in respect of the Decision of the Committee on the complaint EUROMIL v. Ireland (112/2014), where it found violations of the Articles 5 (right to organise) and 6§2 (right to bargain collectively) of the European Social Charter on 12 September 2017.

Response to the findings 2020 of the Committee on the follow-up to decisions on the merits of collective complaints

EUROMIL wishes to refer to the recent finding by the Committee, that the *de facto* inclusion of PDFORRA in public service discussions effectively means that an on-going breach of PDFORRA member's rights under Article 6§2 is moot.

PDFORRA points to the inconsistency of approach by the Committee in circumstances where an on-going breach is deemed to be occurring with members of the AGSI (EUROCOP v. Ireland decision) who are party to the exact same procedure during national pay talks as PDFORRA members.

EUROMIL notes the observations of the Committee, which finds that members of *An Gardai Siochana* are still discriminated against when it comes to national pay negotiations.¹ In the foregoing respect, PDFORRA are confined to the exact same process as members of *An Gardai Siochana* when it comes to discussions on national pay agreements.

In the foregoing respect, EUROMIL understands that practically all of the non-ICTU affiliates complained at the manner of PDFORRA's effective exclusion from the most recent national pay talks held in December 2020.

Indicative of the lack of engagement is the fact that the agenda for the most recent discussions were agreed in advance between the Public Services Committee of ICTU and the Department of Public Expenditure and Reform (DPER), with no input from non-affiliate unions.

¹ Page 152 of the Substantive report [Compilation \(coe.int\)](#)



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On the final day of the most recent talks, the final agreement appeared in national newspapers while talks were supposedly being conducted with the non-affiliate groups. This was remarked upon by numerous groups during this meeting. No amendment of any aspect of the final agreement between ICTU and DPER has been countenanced despite various calls from numerous non-ICTU affiliate bodies.

In the foregoing respect EUROMIL notes the previous finding by the Committee and the observation that:

"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. Especially in a situation where the trade union rights have been restricted, it must maintain its ability to argue on behalf of its members through at least one effective mechanism. Moreover, 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 the workers' side (EuroCOP v. Ireland, Complaint No. 83/2012, §177, op. cit.)."

No member of the non-affiliate groups is represented on the compliance mechanisms built into the recently proposed agreement.

Months after the finalisation of the recently proposed agreement, PDFORRA and its membership have no clarity surrounding the quantum to be applied to the Defence Sector under the awards agreed between the Public Services Committee of ICTU and the Department of Public Expenditure and Reform.

Observations on the last report of Ireland on the implementation of the European Social Charter

Despite assurances, and the inclusion by Government in the last report to the Committee of details of the report of the Public Sector Pay Commission, vast swathes of the proposals made by the Pay Commission in 2019 have not been implemented.

Despite the assertion by Government, that PDFORRA voted to accept the recommendations of the Pay Commission, this is incorrect. The National Executive ratified the recommendations as no other proposals were tabled and the Government provided assurances that the ancillary recommendations of the Commission would be implemented. As stated, this has not been the case.

Following the findings of the Committee in 2018, PDFORRA sought to engage on the issue of association to ICTU with the Department of Defence.

In the intervening period, the then Minister for Defence established a review of the Conciliation and Arbitration (C&A) Scheme. He included a term to discuss the findings of the ECSR. PDFORRA engaged in good faith with this process in the hope that it would establish a road map to allow its body to associate with ICTU.



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Ultimately, the foregoing report recommended the opening up of dialogue. Subsequently, the Chief of Staff rejected the idea of the grant of associate status and entered into correspondence with the Minister and the head of Government. Details of his correspondence were subsequently published in a national newspaper.

Moreover, following the aforementioned review, PDFORRA and its Conciliation and Arbitration Scheme remains bound by the National Pay Agreements, which, as described above, only provide the illusion of negotiations. Agreements cannot be made that are inconsistent with public sector pay policy, which is determined by ICTU and the Department of Public Expenditure and Reform. This remains consistent with the observations made by the Committee at Para 93 of its findings from *EUROMIL v. Ireland* (112/2014).

Within the last year, a new Minister for Defence has been appointed and he has established a new Commission on the Future of Defence, which has within its remit the investigation of remuneration systems.

The Programme for Government (PfG) provides for the establishment of a Pay Review Body, which he appears to be widely promoting. This proposed body is, as outlined in the Programme, purported to be established to deal with issues of pay of members of the Defence Forces while adhering to public sector pay policy. This, PDFORRA would suggest will entirely contravene Article 6§2 and place its members in a more perilous position in terms of collectively bargaining. Moreover, this body appears, from observations made, to be modelled on the British model, which was established prior to Britain joining the EU and which did not permit representation of armed forces personnel.

Arising from the public pronouncement of the foregoing, PDFORRA had no alternative but to initiate legal action through its domestic system.

Since the findings of the Committee the Irish Government has frequently remarked upon the non-binding nature of the finding of the Committee. It has served to frustrate and prevaricate the desire of PDFORRA's membership to associate with ICTU through continuous establishment of commissions and reviews.

The foregoing position would, EUROMIL contest, be inconsistent with the obligation on Governments to:

"[p]romote, where necessary and appropriate, machinery for voluntary negotiations on, inter alia, the regulation of terms and conditions of employment (European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2002, decision on the merits of 21 May 2002, §§51 and 63)."

Conclusions

The Government has, from EUROMIL's perspective, been extremely disingenuous in its correspondence to the Committee and exaggerated the potential of



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engagement to a point where it is barely recognisable as the same process to members of PDFORRA.

EUROMIL would ask that the foregoing points be considered in advance of the next reporting period. EUROMIL intends to submit a substantive response to the on-going difficulties being experienced by PDFORRA in terms of Articles 5 & 6 in the coming months.