



Comments by EUROMIL on Spain's 2nd National Report on the European Social Charter Articles 5 and 6

1. Introduction

This report presents EUROMIL's (the European Organisation of Military Associations and Trade Unions') observations on Spain's application of the right to organise (Article 2) and the right to bargain collectively (Article 6), particularly in relation to professional members of the Spanish Armed Forces and Civil Guard.

2. Right to organise (Article 5)

As highlighted by EUROMIL in collective complaint No. 219/2022 EUROMIL v. Spain, all Spanish military personnel (including the Armed Forces and Civil Guard) are denied the right to organise in trade unions, being allowed only the right to professional association, compared to personnel of other State Security Forces (such as national police, local police and regional police), who can create and join trade unions. In this regard, Article 1 (5) of the Organic Law 11/1985 on Union Freedom states that "*the exercise of the right to unionize by members of Security Forces and Corps that are not of a military nature will be governed by their specific regulations, given the armed nature and hierarchical organization of these Institutes.*" The preamble of Organic Law 2/1986 on Security Forces and Corps declares that "*as regards the right to unionize, its exercise is fully recognized, although certain limitations are introduced.*"

Article 28 (1) of the Spanish Constitution states that everyone has the right to organize freely but the law may limit or exempt the exercise of this right to Armed Forces. Article 1 (3) of the Organic Law 11/1985 on Union Freedom, Article 11 of the Organic Law 11/2007 on the rights and duties of members of the Civil Guard and Article 7 (2) of the Organic Law 9/2011 on the rights and duties of members of the Armed Forces are excluding military personnel to exercise the right to organise, and consequently to form and join trade unions.

EUROMIL argues that as the Spanish Constitution allows to limit the exercise of the right to organise, the Spanish government must permit the right to form and join trade unions and adjust the subsequent laws in accordance with European and international standards. In this regard, EUROMIL recalls the Recommendation CM/Rec(2010)4 on human rights of members of Armed Forces, in which the Committee of Ministers of the Council of Europe states that "*Members of the Armed Forces should have the right to join independent organisations representing their interests and have the right to organise and bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be*



reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted."

3. Collective action (Article 6)

In its report, the Spanish government remarked that the prohibition of the right to strike of members of the Armed Forces and Civil Guard, is based on Article 28 (2) of the Spanish Constitution, which recognizes the right of workers to strike. According to the Spanish government, the Spanish Constitutional Court interpreted members of the Armed Forces and Civil Guard as not workers in the strict sense, given their essential functions for the maintenance of constitutional order.

EUROMIL argues that the Spanish Constitution neither limits nor prohibits the right to strike for members of the Armed Forces and Civil Guard, however, Article 12 of Organic Law 11/2007 and Article 7 of Organic Law 9/2011 excludes them from exercising the right to strike.

EUROMIL stresses that the right to strike must be considered alongside the right to collective bargaining and should only be used as an instrument of last resort to defend workers' rights. However, it is an essential trade union right that must be guaranteed to all workers as it is the most effective mean to achieve a favourable result from a bargaining process.

EUROMIL argues that an absolute prohibition cannot be justified either by the requirements of military discipline or by the public nature of the service. Nevertheless, restrictions on the right to strike may be acceptable under specific circumstances and conditions, namely when social dialogue and the right of collective bargaining are sufficiently organised and effective.

EUROMIL recalls that in its report, the Spanish government states that Spanish Constitutional Court has interpreted that members of the Armed Forces and Civil Guard *"are not considered workers in the strict sense, given their essential functions for the maintenance of constitutional order."*

In the legal argument of case STS 688/2018, the Spanish Supreme Court recites the lower court's ruling which states that members of the Civil Guard have a *"special relationship of subordination (...) which is why the content of these fundamental rights has a smaller scope than the rest of the civil servants"*.

However, paragraph 23 of Judgement of the Court of Justice of the European Union in Case C-337/10 states that *"according to settled case-law, the concept of 'worker' within the meaning of Article 45 TFEU has a specific independent meaning and must not be interpreted narrowly. Any person who pursues activities that are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to that case-law,*



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that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in particular, Case 66/85 Lawrie-Blum [1986] ECR 2121, paragraphs 16 and 17; Case C-138/02 Collins [2004] ECR I-2703, paragraph 26; and Case C-456/02 Trojani [2004] ECR I-7573, paragraph 15)'.

EUROMIL argues that based on the criteria of workers, enshrined in the abovementioned case-law, members of the Armed Forces and Civil Guard are workers, thus, according to the Spanish Constitution, they should have the right to strike, even if it is with limitations considering their essential functions.

4. Conclusions

In light of the above, EUROMIL considers that the current legal framework in Spain does not sufficiently comply with the standards set out in Articles 5 and 6 of the European Social Charter. The continued exclusion of members of the Armed Forces and the Civil Guard from the right to organise in trade unions, as well as the absolute prohibition of the right to strike, constitute disproportionate restrictions that are not adequately justified in a modern democratic society.

While recognizing the specific nature of military service and the need for discipline and operational effectiveness, such considerations cannot lead to a complete denial of fundamental labour rights. European and international standards clearly support the extension of these rights to military personnel, subject to appropriate and proportionate limitations.

EUROMIL therefore calls on the Spanish authorities to review and amend the existing legal provisions to ensure that members of the Armed Forces and the Civil Guard are granted effective rights to organise, to engage in collective bargaining, and (under regulated conditions) to exercise collective action. Strengthening these rights would not undermine military effectiveness; rather, it would contribute to a more balanced, fair, and resilient system of personnel representation in line with European social standards.