



European Organisation of
Military Associations and
Trade Unions

Brussels, Belgium
<http://euromil.org/>

Comments by EUROMIL on the Netherlands' 17th National Report on the European Social Charter Articles 2 and 6

1. Introduction

This report presents EUROMIL's (the European Organisation of Military Associations and Trade Unions') observations on the Netherlands' application of the right to just working conditions (Article 2) and the right to bargain collectively (Article 6), particularly in relation to professional members of the Dutch armed forces.

2. On-call duty compensation (Article 2)

In its report, the Dutch government stated that as on-call duty is outside the established working hours with a view to potentially having to carry out tasks, the time involved is classified as work time.

However, "work time" during on-call duty, during which the service of the military personnel is limited exclusively to mandatory presence at the workplace, counts as rest time [Article 58b. (7) of General Military Civil Service Regulation (GMCSR)], and for that compensation is paid. Nevertheless, working time commences at the moment when personnel are called for performing activities but as it exceeds the average weekly working hours, compensation is paid for overtime in accordance with Article 60c (c) of the GMCSR.

EUROMIL recalls that working time means any period during which the worker is working at the employer's disposal and carrying out his activity or duties, in accordance with national laws, while overtime is usually defined as working hours that are done in addition to normal (legislated) working hours during a day or a week. On-call time is usually defined as periods during which workers are not free to dispose of time as they please and remain at the disposal of the employer to respond to possible calls. Furthermore, case law (for example, Case C-303/98, C-151/02 and C-518/15 of the Court of Justice of the European Union) confirms that if a worker must be physically present at the workplace or the worker is on stand-by at home and must respond to employer calls within a short timeframe (e.g., 8 minutes), the on-call or stand-by time qualifies entirely as working time.

3. Collective action (Article 6)

On the contrary of the claim that the Netherlands has no specific sector in which the right to strike is prohibited, for military personnel it is forbidden to strike.



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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.

4. Conclusions

EUROMIL concludes that, while the Netherlands provides a structured framework for regulating working conditions and social dialogue within its armed forces, important shortcomings remain in the full implementation of the rights enshrined in Articles 2 and 6 of the European Social Charter.

In particular, the current treatment of on-call duty raises concerns regarding the proper qualification of working time and corresponding compensation. Furthermore, the absolute prohibition on the right to strike for military personnel appears disproportionate and insufficiently balanced by alternative mechanisms ensuring effective collective bargaining.

EUROMIL therefore encourages the European Committee of Social Rights to further examine these issues and to promote a framework that ensures both the operational needs of the armed forces and the fundamental social rights of military personnel are adequately safeguarded.