EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 9 September 2025

Notification: 8 October 2025

Publication: 9 February 2026

European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland

Complaint No. 212/2022

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 350th session in the following composition:

Aoife NOLAN, President
Tatiana PUIU, Vice-President
George THEODOSIS, Vice-President
Kristine DUPATE, General Rapporteur
Karin Møhl LARSEN
Yusuf BALCI
Mario VINKOVIC
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA
Grega STRBAN
Olivier DE SCHUTTER
Kristina KOLDINSKA
Carmen Constantina NENU

Assisted by Henrik KRISTENSEN, Executive Secretary

Having deliberated on 14 May and 9 September 2025,

On the basis of the report presented by Yusuf BALCI,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint lodged by the European Organisation of Military Associations and Trade Unions (EUROMIL) was registered on 9 August 2022.

2. EUROMIL alleges that certain members of the Irish Defence Forces do not enjoy adequate compensation for work on public holidays or an increased rate of remuneration for overtime work, in violation of Articles 2§1, 2§2, 4§1 and 4§2 of the Revised European Social Charter ("the Charter"). In particular, EUROMIL claims that the Government has failed to provide adequate remuneration to members of the Defence Forces, including in the form of overtime payment premiums or increased time off in lieu for personnel carrying out duties for a duration of 24 hours or more; that the Government has failed to conclude collective agreements covering working hours for members of the Defence Forces; that the Government has failed to conclude collective agreements providing for payment premiums for work on public holidays; and that the ban on discussing overtime payments as part of the Scheme for Conciliation and Arbitration is unreasonable, disproportionate and unnecessary having regard to the aim to be achieved when compared to the scope given to all other public servants and members of the security services.

3. On 23 January 2023, the Committee declared the complaint admissible.

4. Referring to Article 7§1 of the 1995 Additional Protocol providing for a system of collective complaints ("the Protocol"), the Committee invited the Government to make written submissions on the merits of the complaint by 15 March 2023. The Government's submissions were registered on 15 March 2023.

5. Referring to Article 7§§1 and 2 of the Protocol and pursuant to Rule 32§§1, 2 of its Rules ("the Rules"), the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter as well as the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter, to notify any observations they may wish to make on the complaint by 15 March 2023.

6. Pursuant to Rule 31§2 of the Rules, the President of the Committee invited EUROMIL to submit a response to the Government's submissions on the merits by 16 May 2023. EUROMIL's response was registered on 10 May 2023.

7. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to EUROMIL's response by 30 June 2023. The Government's reply was registered on 30 June 2023.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

8. EUROMIL alleges that the situation in Ireland is in violation of Articles 2§1, 2§2, 4§1 and 4§2 of the Charter on the following grounds:

- the Government has failed to conclude collective agreements pertaining to working hours and payment premiums for work on public holidays and this endangers the health and safety of members of the Defence Forces;
- the current levels of payments do not amount to a premium payment for work on public holidays, where additional days are not provided and premium payments are not made;
- the Government has failed to provide adequate remuneration to members of the Defence Forces, including in the form of overtime payment premiums or increased time off in lieu for personnel carrying out duties for a duration of 24 or more hours;
- the ban on discussing overtime payments as part of the Scheme for Conciliation and Arbitration is unreasonable, disproportionate and unnecessary having regard to the aim to be achieved when compared to the scope of negotiation given to all other public servants and members of the security services.

B – The respondent Government

9. The Government rejects the allegations of the complainant organisation and asks the Committee to find that there is no violation of the Charter provisions invoked.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Domestic legislation

10. Defence Act No. 18/1954 – as amended

Chapter III. Service of Members of the Defence Forces

"85. Every officer and man of the Permanent Defence Force shall be liable at all times to render military service within the State and, if he is employed on a State ship or service aircraft, be liable at all times while so employed to render military service outside the territorial seas of the State"
[…]

Chapter IV. Pay and Allowances of Members of the Defence Forces

"97. – (1) The Minister [for Defence] may make regulations in relation to the following matters –
(a) the rates and scales of pay, allowances and gratuities of members of the Defence Forces,
(b) the grants which may be made to members and units of the Defence Forces,
(c) the conditions applicable to the issue of such pay, allowances, gratuities and grants,
[…]"

11. Organisation of Working Time Act No. 20/1997 – as amended

Part I. Preliminary and General

"2. […] "employee" means a person of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be; […]
3. – (1) Subject to subsection (4), this Act shall not apply to a member of the Garda Síochána or the Defence Forces.
[…]
(4) The Minister may, after consultation with any other Minister of the Government who, in the opinion of the Minister, might be concerned with the matter, by order provide that a specified provision or provisions of this Act or, as the case may be, of Part II shall apply to a specified class or classes or person referred to in subsection (1) or (2) and for so long as such an order remains in force the said provision or provisions shall be construed and have effect in accordance with the order.
[…]

Part II. Minimum rest periods and other matters relating to working time

11. – An employee shall be entitled to a rest period of not less than 11 consecutive hours in each period of 24 hours during which he or she works for his or her employer.
[…]
13. – […] (2) Subject to subsection (3), an employee shall, in each period of 7 days, be granted a rest period of at least 24 consecutive hours; […]
[…]
15. – (1) An employer shall not permit an employee to work, in each period of 7 days, more than an average of 48 hours […].
[…]"

12. S.I. No. 11/2025 – European Communities (Organisation of Working Time) (Defence Forces) Regulations 2025 of 20 January 2025

"The Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, hereby makes the following regulations:
1. These Regulations may be cited as the European Communities (Organisation of Working Time) (Defence Forces) Regulations 2025.
2. The Organisation of Working Time Act 197 (No. 20 of 1997) is amended –
(a) in section 2(1), in the definition of "employee", by the insertion, after "the State or Government, as the case may be," of "a person holding office under, or in the service of, the State as a member of the Defence Forces shall be deemed to be an employee employed by the state or Government, as the case may be,",
(b) in section 3 –
(i) in subsection (1) by the deletion of "or the Defence Forces",
(ii) by the insertion of the following subsections after subsection (1):
"(1A) Subject to subsection (4), this Act shall not apply to a member of the Defence Forces where the member is –
(a) on active service within the meaning of section 5 of the Defence Act 1954,

(b) deemed to be on active service in accordance with section 4(1) of the Defence (Amendment) (No. 2) Act 1960,
(c) despatched for service outside the State under subsection (1) of section 3 of the Defence (Amendment) Act 2006 for any purpose referred to in paragraph (b), (d), (e) or (f) of that subsection,
(d) engaged in duties and tasks while on sailing orders,
(e) engaged in operations in aid to the civil power,
(f) in barracks during an assigned duty period relating to explosive ordnance duties, or deployed to perform such duties,
(g) engaged in fire crew duties at Casement Aerodrome, Baldonnel,
(h) engaged in operational activities as a member of the Army Ranger Wing,
(i) engaged in –
(i) induction training,
(ii) Special Operations Force Qualification,
(iii) essential training prior to a period of active service within the meaning of section 4(1) of the Defence (Amendment) (No. 2) Act 1960, or
(iv) essential training prior to a period of despatch for service outside the State in accordance with section 3(1) of the Defence (Amendment) Act 2006 for any purpose referred to in paragraph (b), (d), (e) or (f), or
(j) engaged in activities of a special nature on the direction of Government, or in support of a state body, that cannot, due to the nature of the activities in question, be performed in compliance with the provisions of this Act.
(1B) In subsection (1A), 'state body' means –
(a) a Minister of the Government, or
(b) a person –
(i) established by or under any enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or
(ii) established under the companies Act 2014, or a former enactment relating to companies within the meaning of section 5 of that Act, in pursuance of powers conferred by or under another enactment,
and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government.", and
(iii) in subsection (4), by the substitution of "subsection (1), paragraphs (a) to (j) of subsection (1A) or subsection (2)" for "subsection (1) or (2)",
and
(c) in section 17 –
(i) in subsection (1), by the substitution of "and employee's employer shall, other than where the employee is a person holding office under, or in the service of, the State as a member of the Defence Forces, ensure" for "and the employee's employer shall ensure", and
(ii) in subsection (1A), by the substitution of "an employee, other than a person holding office under, or in the service of, the State as a member of the Defence Forces, shall have the right" for "an employee shall have the right".

13. Defence Force regulations A.11, Leave, June 2011 – as amended

Part 5 – Defence Forces holidays, local and weekend leave
41. Defence Forces holidays

"(1) The following days shall be observed as Defence Force holidays:

1st January	11th July
17th March	First Monday in August
Good Friday	15th August
Easter Monday	Last Monday in October
First Monday in May	25th December
1916 Commemoration Day	26th December

First Monday in June.
Such other days as the Minister may specially authorise.
(2) When either the 25th or 26th December falls on a Sunday, the 27th December shall be observed a Defence Force holiday. Where any of the other holidays prescribed in subparagraph

(1) falls on a Sunday, the day immediately following shall be observed as a Defence Force holiday.
(3) On Defence Force holidays, Defence Force members shall, as far as possible, be relieved of all normal routine duties. They may, however, be required to attend such ceremonial and/or special parades as may be ordered. Where, owing to the exigencies of the service, a member is required to carry out normal duties or a ceremonial or special parade on a Defence Force holiday, such member shall be relieved of all normal duties on any day within 1 month after the Defence Force holidays concerned."

14. Report of the Commission on remuneration and conditions of service in the Defence Forces of 31 July 1990

"[…]
3.3.5 The pay linkage with civil service grades was criticised in many of the submissions received by the Commission. This criticism is to a degree understandable given the very different nature of the jobs involved. […]
3.3.6 A recurrent complaint running through the submissions has been the absence of any independent evaluation of pay levels in the Defence Forces since their establishment. Alone among many elements that make up the public service, Defence Forces personnel have never had access to any of the bodies that have from time to time investigated pay in the public service such as Arbitration Boards, the Labour Court, Review Bodies and Commissions of Enquiry.
[…]
3.7.5 A fair, coherent and acceptable remuneration structure within the Defence Forces must
(i) have regard to horizontal relativities across the Army, Naval Service and Air Corps, and
(ii) establish appropriate vertical differentials between the different ranks.
[…]
3.7.25 The Commission has concluded that a direct comparison of privates with prison officers and firefighters is not justified.
[…]
3.7.27 One of the major roles assigned to the Defence Forces, the provision of aid to the civil power, necessarily involves contact on a regular basis between Defence Forces personnel and members of the gardaí. However, the great majority of military personnel and gardaí are engaged in duties which are quite dissimilar. The essence of the comparability principle is that the work should be broadly comparable in most aspects. This is not so as between the gardaí and the military.
[…]
3.9.10 […] MSA [Military service allowance] should be paid at the same rate to all ranks up to and including colonel, subject to the exceptions which apply at present. This will involve the extension of the full rate of MSA to commandants and the payment of MSA for the first time to lieutenant colonels and colonels.
[…]
4.1.1 Security duty allowance (SDA) was introduced in 1974 because of the significant increase in the incidence of duties being undertaken by members of the Defence Forces, particularly duties in aid to the civil power. It was increased by 44% by the Inter-Departmental Committee and the current rates are £14.57 per day for duties performed on weekdays and £29.14 for duties performed on Sundays and Defence Forces Holidays. […]
[…]
4.2.1 Border duty allowance was introduced in 1972. It is payable on a continuous basis to members of the border units. The rate of allowance was increased by 77% by the Inter-Departmental Committee and the current weekly rates are £36.41 (enlisted personnel) and £41.62 (officers). SDA is not paid concurrently with border duty allowance.
[…]

4.3.1 A prison allowance, introduced in 1975, is paid to military personnel performing security duties at Portlaoise Prison. Military personnel drawn from all Commands are mobilised into a special unit, No. 1 Security Company, for this purpose. The tour of duty normally lasts about two months, and a daily allowance is payable in respect of days spent in the prison, approximately one month in aggregate during each tour of duty. The allowance is flat rate and currently amounts to £21.85 per day. It was increased by 48% by the Inter-Departmental Committee. Personnel performing security duties at Limerick Prison are drawn from local units; they are not paid a special allowance but qualify for security duty allowance.
[…]
4.4.1 A special allowance of £46.82 per week is payable, on a continuous basis, to all personnel serving in the Army Ranger Wing. This allowance was increased by 51% following the report of the Inter-Departmental Committee. […]
[...]
7.2.1 Naval pay is a payment, additional to regimental pay, which is made to all Naval Service enlisted personnel at a flat rate of £1.06 per day (£7.42 per week).
[...]
7.4.2 PDA [Patrol Duty Allowance] is payable to personnel serving aboard a Naval Service ship on patrol duty away from the Naval Base, Haulbowline and is paid in respect of each day spent on patrol. [...]
[...]
7.5.1 An in-charge allowance is paid to the officer in command of a ship and to the engineer officer in charge of plant and machinery on board. This allowance was introduced in 1979 to compensate for the extra responsibilities borne by these personnel. The allowance currently amounts to £5.01 per day and is payable for each day in respect of which PDA is paid.
[...]
7.6.1 When diving, Naval Service divers are paid a diving allowance of £5.9 per day. The rate of diving allowance was increased by 25% by the Inter-Departmental Committee.
[…]"

15. Report of the Public Service Pay Commission (Recruitment and Retention in the Permanent Defence Force), May 2019

"The Commission recognises that the PDF [Permanent Defence Forces] is experiencing retention challenges. Turnover in the PDF has increased significantly. In 2018 the overall turnover rate for the PDF was 8.1%, up from 5.1% in 2013.
[…]
It is the Commission's view, given the significant issues being experienced with regard to retention, that certain military allowances, including the MSA, the SDA and equivalent allowances, should be augmented.
[…]
There are a number of allowances that are payable to personnel in the PDF in addition to basic pay. These military allowances fall into three main categories:
A. Payments in the nature of pay, including payments for duties and deployments (including overseas deployments);
B. Payments in respect of skills required in the PDF, i.e. specialist posts; and
C. Payments in respect of reimbursement type expenditure, e.g. travel, overseas financial support packages, etc.
[…]
MSA was introduced from 1st May, 1979, to compensate PDF Personnel for the unique conditions and special disadvantages of military life, including liability for duty 24 hours a day, 7 days a week; requirement to serve for a fixed term of engagement; restrictions on personal liberty as a result of the code of military discipline which have no counterpart in civilian

employment; risk of personal dangers/loss of life; bad and uncomfortable conditions; and personal responsibility for use of lethal weapons.
[…]
SDAs are paid in respect of a range of security duties which personnel are detailed to perform. It is payable to enlisted personnel and officers up to and including the rank of Captain. It is not paid to members of the Army Ranger Wing. […] As a compensatory measure for the flat rating of the allowance, a member of the PDF performing a 24-hour duty on a Sunday only receives a day in lieu for the Sunday (in addition to the rest day off which they receive performing a 24-hour duty).
[…]
Working in the PDF has a negative impact on work-life balance. This arises from a lack of choice surrounding working long hours (particularly where there are disproportionate workloads), having to undertake 24-hour duties and having to be available to the PDF 24/7. […]"

16. In August 2019, the Defence Forces proposed to the Defence Forces' officials compensatory rest periods in respect of 24-hour duty in barracks introducing "accelerated provisions". According to them: a rest day following a 24-hour duty in barracks will be allowed following the completion of a 24-hour duty in barracks; a day in lieu, additional to the rest day currently allowed in respect of weekend 24-hour barrack duties. By default, this additional day will be continuous with the rest day (i.e. on the Monday following a Sunday rest day or the Tuesday following a Monday rest day); however, subject to the exigencies of service, a Unit Commander may order that this additional day be deferred for a minimum period necessary, of up to 14 days. This additional day will be allowed in such a manner as to have the effect of making provision for a weekend break per 7-day period with a reference period of 14 days.

17. According to the **Conciliation and Arbitration Scheme for members of the Permanent Defence Force of January 2020**, claims to overtime payments may not be entertained.

18. **Report of the Commission on Defence Forces, February 2022**

"[…]
8.3.2 […] The White Paper of Defence (2015) provides the policy basis for a Permanent Defence Force (PDF) full-strength establishment of at least 9,500 personnel. This strength ceiling was set in late 2011 as part of Budget 2012, having previously been reduced twice by Government during the financial crisis. By the end of 2011, the serving strength of the PDF was 9,438 personnel and was still relatively stable at 9,251 by the end of 2017. In the period since, however, the serving strength has fallen far more sharply and, by the end of 2020, had reduced to 8,649 personnel. […]
[…]
8.3.5 […] The Directive was transposed into Irish law by way of the Organisation of Working Time Act 1997 and, in accordance with the interpretation of the Directive at that time, as shared by other Member States, this excluded the Defence Forces (and An Garda Síochána) from its scope. The Commission understands that in 2008, the European Commission issued a draft report that referred to the jurisprudence of the European Court of Justice which clarified that a broadly based 'blanket' exclusion for all the activities of the Defence Forces is not compatible with the Directive. […]
In 2016 the Government approved a request by the then Minister for Jobs, Enterprise and Innovation to draft heads of a Bill to amend the Organisation of Working Time Act, 1997. The

intention is to remove the blanket exclusion of An Garda Síochána and members of the Defence Forces and bring them within the scope of the Act, subject to the application of the derogations permitted by the Directive. […]
The Commission believes that the nature of overseas service, including overseas trips or missions conducted by State ships and aircraft, precludes them from inclusion and justifies an exemption from the Directive. […] However, in line with best international practice identified in other armed forces and similar arrangements in An Garda Síochána, the Commission believes that all routine activities of the Defence Forces, both operational and non-operational, should be subject to the Directive. […]
[…]
Working hours exceeding the expected norm should receive adequate compensation and also be managed appropriately at an organisational, service and unit level. […] Appropriate methods for addressing hours worked in excess of expected norms are best negotiated between management and the representative associations.
[…]
Connected to this, the Commission also notes the requirement to develop and implement a system for recording time and attendance, to ensure compliance with the provisions of the Directive and, while cognisant of the complexity and challenges involved in doing so across such a disparate organisation, believes that measures to introduce such a system should be implemented without delay. As part of its deliberations, the Commission noted the absence of reliable data in relation to hours actually worked by Defence Forces personnel. This is an essential tool for both management and representative associations.
[…]
8.4.2
[…]
The Commission has no brief to look at rates of pay and allowances. However, without making any comment on the adequacy of pay levels, it has observed that much of the commentary surrounding issues of pay in the Defence Forces does not seem to fully reflect the totality of the remuneration package, particularly so in the context of various allowances that are payable. The Commission believes that a more complete portrayal of the total package of attractive benefits to joining the Defence Forces needs to be better communicated and marketed as there has been a somewhat disproportionate emphasis on basic pay rates […]
[…]
8.4.3
[…]
In relation to MSA more generally, this is currently paid to all personnel, who have completed training, up to and including the rank of Colonel. Depending on rank, this can add between €5,233 and €7,857 to annual salaries […].
[…]
8.4.5
[…]
While members of the Defence Forces are currently beneficiaries of the public sector pay determination process, they are in fact precluded from participating in it in any meaningful way as their representative bodies are not permitted to associate with or affiliate to ICTU [Irish Congress of Trade Unions].
[…]"

RELEVANT INTERNATIONAL MATERIAL

A – Council of Europe

1. Committee of Ministers

19. The Committee of Ministers of the Council of Europe, in its Recommendation CM/Rec(2010)4 on human rights of members of the armed forces held that whilst taking into account the special characteristics of military life, members of the armed forces, whatever their status, shall enjoy the rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter, as well as other relevant human rights instruments, to the extent that States are bound by them. Professional members of the armed forces should receive remuneration for their work such as will give them a decent standard of living.

B – The United Nations (UN)

20. International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

Article 7

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
a) Remuneration which provides all workers, as a minimum, with:
i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
b) Safe and healthy working conditions;
c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

C – International Labour Organisation (ILO)

21. Convention (No. 117) concerning Social Policy (Basic Aims and Standards) (adopted on 22 June 1962, entry into force on 23 April 1964)

Article 11

"1. The necessary measures shall be taken to ensure the proper payment of all wages earned and employers shall be required to keep registers of wage payments, to issue to workers statements of wage payments and to take other appropriate steps to facilitate the necessary supervision.
[…]"

D – European Union (EU)

22. Treaty on European Union

Article 4

"[…]
2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.
[…]"

23. Charter of Fundamental Rights of the EU

Article 31 – Fair and just working conditions

"1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave."

24. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work

Article 1. Object

"1. The object of this Directive is to introduce measures to encourage improvements in the safety and health of workers at work.
2. To that end it contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.
[…]"

Article 2. Scope

"1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc).
2. This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.
In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive."

25. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (Directive 2003/88/EC)

Article 2. Definitions

"For the purposes of this Directive, the following definitions shall apply:
1. "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 and/or practice;
2. "rest period" means any period which is not working time;
[…]"

Article 3. Daily rest

"Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period."

Article 5. Weekly rest period

"Member States shall take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3.
If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied."

Article 6. Maximum weekly working time

"Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:
a) the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry;
b) the average working time for each seven-day period, including overtime, does not exceed 48 hours."
[…]

Article 17. Derogations

"[…]
3. In accordance with paragraph 2 of this Article derogations may be made from Articles 3, 4, 5, 8 and 16:
[…]
(b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;
(c) in the case of activities involving the need for continuity of service or production […]"

26. Court of Justice of the European Union (CJEU)

Case C-742/19, B.K., CJEU Judgment of 15 July 2021

"The questions asked in the case were as follows: "(1) Does Article 2 of [Directive 2003/88] apply even to workers employed in the defence sector and to military personnel who perform guard duty in peacetime? (2) Does Article 2 of [Directive 2003/88] preclude national legislation pursuant to which time spent by workers in the defence sector at their place of work or at some other designated place (but not at home) on stand-by, and time during which military personnel in the defence sector performing guard duty are physically present in barracks but not actually working, is not counted as "working time"?"

The CJEU held that the principal tasks of the armed forces of the Member States, which are the preservation of territorial integrity and safeguarding national security, are expressly included among the essential functions of the State which the European Union must respect in accordance with Article 4(2) TEU. It also held that it is apparent from the case-law of the CJEU that the Member States' choices of military organisation for the defence of their territory or of their essential interests are not governed, as such, by EU law. That said, it does not result from the respect which the European Union must have for the essential functions of the State, as laid down in Article 4(2) TEU, that decisions on the organisation of their armed forces fall entirely

outside the scope of EU law, in particular where the rules at issue relate to the organisation of working time.

The CJEU further held that the criterion used in the first subparagraph of Article 2(2) of Directive 89/391 to exclude certain activities from the scope of that directive and, consequently, from that of Directive 2003/88, is based not on the fact that workers belong to one of the sectors of the public service referred to in that provision, taken as a whole, but exclusively on the specific nature of certain particular tasks performed by workers in the sectors referred to in that provision, which justify an exception to the rule on the protection of the safety and health of workers, on account of the absolute necessity to guarantee effective protection of the community at large.

The CJEU concluded that Article 1(3) of Directive 2003/88, read in the light of Article 4(2) TEU, must be interpreted as meaning that a security activity performed by a member of military personnel is excluded from the scope of that directive: where that activity takes place in the course of initial or operational training or an actual military operation; or where it is an activity which is so particular that it is not suitable for a staff rotation system which would ensure compliance with the requirements of that directive; or where it appears, in the light of all the relevant circumstance, that that activity is carried out in the context of exceptional events, the gravity and scale of which require the adoption of measures indispensable for the protection of the life, health and safety of the community at large, measures whose proper implementation would be jeopardised if all the rules laid down in that directive had to be observed; or where the application of that directive to such an activity, by requiring the authorities concerned to set up a rotation system or a system for planning working time, would inevitably be detrimental to the proper performance of actual military operations."

THE LAW

PRELIMINARY CONSIDERATIONS

As to the provisions of the Charter at stake

27. With respect to the Charter provisions at stake, EUROMIL alleges that the situation described in the present complaint is in breach of the following provisions:

a. Article 2§1, as the Government has failed to conclude a collective agreement pertaining to working hours and this endangers the health and safety of members of the Defence Forces;
b. Article 2§2, as the current levels of payments do not meet levels necessary to constitute a premium payment for work on public holidays, where additional days and premium payments are not made;
c. Articles 4§1 and 4§2, as the Government has failed to provide adequate remuneration to members of the Defence Forces, including in the form of overtime payment premiums or increased time off in lieu for personnel carrying out duties for a duration of 24 or more hours
d. Article 4§2, as the ban on discussing overtime payments as part of the Scheme for Conciliation and Arbitration is unreasonable, disproportionate and unnecessary having regard to the aim to be achieved when compared to the scope given to all other public servants and members of the security services.

28. While EUROMIL argues that the authorities violate Articles 2§§1-2, 4§§1-2 of the Charter, the Committee notes that the grievances expressed by the complainant organisation in respect of these provisions of the Charter are not sufficiently substantiated to allow a distinct assessment under all of these provisions.

29. The Committee recalls that, while Article 2§1 of the Charter provides for the reasonable daily and weekly working hours, EUROMIL's complaint focuses on overtime and adequate remuneration for it. Similarly, while Article 4§1 provides for the right to a fair remuneration, the complainant organisation raises issues related to compensation for overtime and remuneration for work on public holidays.

30. Considering all the information at its disposal, the Committee decides to assess the complaint from the standpoint of Articles 2§2 and 4§2 of the Charter and rejects the allegations made under Articles 2§1 and 4§1 of the Charter as unsubstantiated, as the complaint relates in substance to the remuneration for work on public holidays and compensation for overtime.

As to the alleged violation of European Union law

31. The Committee notes that the allegations put forward by the complainant organisation are mostly based on alleged violations of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and on decisions of the Court of Justice of the European Union.

32. The Committee recalls that it has already considered that it is competent neither to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the European Social Charter (see *Confédération Générale du Travail* (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§32 and 33; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§72 to 74; Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018, §114, *Unione sindacale di base (USB)* v. Italy, Complaint No. 170/2018, decision on the merits of 26 January 2022, §46). The Committee's mandate is to assess whether national legislation is compatible with the standards of the European Social Charter (see, mutatis mutandis, *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato (UGL–CFS)* and *Sindacato autonomo polizia ambientale forestale (SAPAF)* v. Italy, Complaint No. 143/2017, decision on the merits of 3 July 2019, §99). The Committee will therefore assess whether remuneration for work on public holidays and remuneration for overtime satisfy the requirements of Articles 2§2 and 4§2 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 2§2 OF THE CHARTER

33. Article 2§2 of the Charter reads as follows:

Article 2 –The right to just conditions of work

Part I: “All workers have the right to just conditions of work.”

Part II: “With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
[…]

2. to provide for public holidays with pay;”

A – Arguments of the parties

1. The complainant organisation

34. EUROMIL submits that the Defence Forces generally provide paid time off in lieu where personnel work on public holidays. However, in certain circumstances, members of the Defence Forces receive no additional premium or time off for working during public holidays and the conditions concerning time off do not apply to all members equally due to the varying nature of the work carried out. Examples of such circumstances are: personnel who are at sea during a public holiday; personnel employed to work in Portlaoise Prison as security; a recent instance where personnel were not granted time off in lieu on the nearest working day after a public holiday on a weekend, as is commonplace in the wider public service in Ireland; personnel in the Army Ranger Wing working on public holidays or hours outside of duty.

35. EUROMIL also points out that members of the Naval Service can be required to work on a 7/7 basis: they receive a basic rate of pay and a flat rate allowance corresponding to each day spent at sea, bearing no correlation to the National Minimum Wage rate on an hourly basis. Moreover, when personnel work on public holidays or weekends, no increased allowance is paid – the premium is a flat rate – and no additional time off in lieu in recognition of the public holiday is provided. Similar situation is with the members of the Ordnance Corps, including Explosive Ordnance Disposal. Moreover, when personnel work during public holidays/weekends, no increased allowance is paid, except the one that is paid for each day on the Explosive Ordnance Disposal duty. Additionally, members of the Army Ranger Wing receive no additional premium for working during public holidays or hours outside of normal duty hours as they only receive a flat rate payment for the membership of this unit.

36. EUROMIL moreover submits that the current levels of payments do not meet levels necessary to constitute a premium payment for working on public holidays, where additional days and premium payments are not made. EUROMIL further claims that in circumstances where personnel are unable to use the day off within the month of undertaking a duty on a public holiday, they forfeit this day regardless of circumstances leading to the forfeiture of that day.

37. While EUROMIL acknowledges the provisions of Defence Force Regulation A.11 (Leave) and the provisions contained therein regarding public holidays, it points out that these regulations do not provide for double pay or double time off when personnel are working on these days. No specific provisions regarding time off for

personnel working in the areas of the Naval Service, Portlaoise Prison, Army Ranger Wing, Explosive Ordnance Disposal or other groups that are paid flat rate allowance are contained in the regulations, thus contravening the requirements of the Charter.

2. The respondent Government

38. The Government states that, when required to work on a public holiday, a member of the Permanent Defence Forces will be paid their basic wage, plus military service allowance (MSA), plus any allowance payable at a higher rate than normal (the enlisted ranks may receive aid to the civil authority allowance, security duty allowance, maintenance of essential services allowance, on call allowance Naval Service divers, on call allowance Portlaoise hospital guard; the officer ranks may receive maintenance of essential services allowance and security duty allowance). In addition, they will be entitled to compensatory time off on any day within one month after the Defence Forces holiday concerned. The Government provides a list of Defence Forces holidays codified in the Defence Force Regulations, A.11 (Leave) (see §13 above). Members of the Defence Forces have received additional days at Christmas and Easter by Ministerial direction. Also, when either 25 or 26 December falls on a Sunday, 27 December shall be observed as a Defence Forces holiday. Where any of the public holidays fall on a Sunday, the day immediately following shall be observed as a Defence Forces holiday. On Defence Forces holidays, their members shall, as far as possible, be relieved of all normal routine duties. They may, however, be required to attend such ceremonial and/or special parades as may be ordered. In that case, such member shall be relieved of all normal duties on any day within one month after the Defence Forces holiday concerned.

39. The Government states that in practice there is flexibility to avail of a day in lieu if required to work on a bank holiday. Should the situation arise that an individual cannot avail of a day in lieu within one month of the day being accrued, Commanders, at all levels, are encouraged to show flexibility in ensuring that an individual can avail of a day's leave in lieu.

40. In the alternative, the Government submits that retaining flexibility of working hours beyond the typical working day pursues the legitimate objective of public safety and national security and is proportionate to the legitimate objective sought to achieve, in accordance with Article G of the Charter.

B – Assessment of the Committee

41. The Committee recalls that Article 2§2 of the Charter guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave (Conclusions 2018, Latvia). Public holidays may be specified in law or in collective agreements (ibid.). As a rule, work should be prohibited during public holidays (ibid.). However, work can be carried out on public holidays under specific circumstances set by law or collective agreements (Conclusions 2014, the Netherlands).

42. The Committee has also held that work performed on a public holiday entails a constraint on the part of the worker, who should therefore be compensated (Conclusions 2014, the Netherlands). Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between States Parties in this regard, States Parties enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday (Conclusions 2014, Andorra).

43. Moreover, the Committee has stated that in assessing whether the compensation for work performed on public holidays is adequate, it will take into account levels of compensation provided for in the form of increased salaries and/or compensatory time off under the law or the various collective agreements in force, in addition to the regular wage paid on a public holiday, be it calculated on a daily, weekly or monthly basis (Conclusions 2014, France).

44. Finally, the Committee has held that work performed on a public holiday should be compensated with a higher remuneration than that usually paid: in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage (Conclusions 2010, Statement of Interpretation on Article 2§2). The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked (Conclusions 2010, Statement of Interpretation on Article 2§2).

45. Coming to the circumstances of the present case, the Committee notes that in cases where the members of the Defence Forces are required to work on Defence Forces/public holidays, they receive their basic wage and MSA at a normal rate. Also, certain members of the Defence forces receive allowances payable at a higher rate than normal.. Also, they receive compensatory time off on any day within one month after the Defence Forces/public holiday concerned.

46. The Committee further notes that MSA is paid to all members of the Defence Forces (up to and including the rank of Colonel with the exception of training grades) and its amount does not vary depending on whether the work is caried out on a public holiday, but rather on the rank of the member of the Defence Forces. It cannot therefore be considered as an increased compensation for work on a public holiday.

47. The Committee also notes that the Government provides a list of other allowances that are paid at a higher rate for enlisted personnel when carried out on a Defence Forces/public holiday (see §38 above). The Committee notes from other sources (the website of the Defence Forces) the following:

- As of 1 August 2025, depending on whether staff were recruited before or after January 2013, for duties performed between Monday and Saturday that are less

than 24 hours, is €32.54 or €34.27, for those performed between Monday and Saturday that attain 24 hours - €65.06 or €68.48, for those performed on Sundays and Defence Forces/public holidays that are less than 24 hours - €65.06 or €68.48, for those performed on Sundays and Defence Forces/public holidays that attain 24 hours - €130.17 or €137.01;

- maintenance of Essential Services Allowance on weekdays is €61.22, while on Sundays and Defence Forces/public holidays it is €122.56;

- on-call daily allowance of a Portlaoise hospital guard is €32.54, while on Sundays and Defence Forces holidays it is €65.06.

48. In these circumstances, the Committee notes that the allowances examined above (see §47 above) are paid at a double rate on Defence Forces/public holidays. In addition, a member of the Defence Forces carrying out the specific functions that attract the payment of such allowances is entitled to a compensatory day off in lieu. It therefore considers that in respect of such members of the Defence Forces the situation of compensation for work on public holidays is in conformity with the Charter.

49. However, the Committee notes that these allowances would not be paid in all cases when the members of the Defence Forces have to work on a Defence Forces/public holiday and their payment is linked to the performance of special functions. Therefore, if a member of the Defence Forces who does not carry out special functions and who is not entitled to special allowances related to those functions is required to carry out normal duties or participate in a ceremonial or special parade on Defence Forces/public holidays, they would receive their basic wage (including the MSA) and a day off in lieu.

50. The Committee therefore considers that in the present case it remains to be examined whether the situation of the members of the Defence Forces, who do not carry out specific functions and do not receive additional allowances related to those functions, is in accordance with the Charter.

51. The Committee notes that while the Charter requires that compensatory time-off should be at least double the days worked, only one day off is provided to the members of the Defence Forces for work on a Defence Forces holiday. Also, in case of those members of the Defence Forces that do not carry out specific functions, no increased allowances are paid for work during Defence Forces/public holidays.

52. Considering that the situation of those members of the Defence Forces that do not carry out specific functions amounts to a restriction on the right guaranteed by Article 2§2, the Committee will have regard to Article G of the Charter. The Committee will assess whether the measures that result in not paying double wages or providing

compensatory time off that is at least double the time actually worked comply with the conditions set out in Article G, namely, whether they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society for the pursuit of that aim.

53. The Committee notes that the provision of compensatory time off in lieu is established in the Organisation of Working Time Act and Defence Force regulations A.11 concerning leave (see §§11 and 13 above). The Committee therefore considers that the restriction is prescribed by law.

54. The Committee further considers that the restriction has the legitimate aim of the protection of public interest of military readiness.

55. The Committee therefore needs to determine whether the restriction is necessary in a democratic society for the aim pursued. In that regard, the Committee notes the specific nature of the mission of the Defence Forces and considers that some restrictions can be imposed. However, such restrictions should not deprive the members of the Defence Forces of the general right to public holidays with pay.

56. It is not clear why regular members of the Defence Forces, that do not carry out additional duties that would attract the application of specific allowances which are doubled in case of work on a Defence Forces/public holiday, should not be paid double or receive double time off in lieu when they have to work on Defence Forces/public holidays. The Government's arguments do not clarify the situation because they focus on compensation for the work on Defence Forces/public holidays when those members of the Defence Forces working carry out specific functions and receive specific allowances at a double rate than usual, and also receive a day off in lieu. The Government does not provide any relevant information about the other members of the Defence Forces that do not carry out specific functions and that, in case of work during Defence Forces/public holidays, would only receive their standard pay, standard MSA and one day off in lieu. In addition, this day in lieu has to be taken within one month of it being accrued and, as it appears from the explanations of EUROMIL, it is often forfeited (see §36 above).

57. Based on the foregoing, the Committee considers that the Government has not demonstrated that the failure to pay a higher rate for work carried out on Defence Forces/public holidays for the members of the Defence Forces that do not carry out the functions attracting additional allowances is proportionate to the aim of the protection of public interest. The Committee further considers that the Government has not demonstrated how only one day off in lieu awarded to such members without any additional compensation can be proportionate to the aim mentioned above.

58. In light of the above, the Committee considers that in view of the right to public holidays with pay, restrictions to the amount of compensation or the length of compensatory time off in lieu for those members of the Defence Forces that do not

carry out specific functions that would attract the payment of additional allowances are not proportionate to the aim pursued.

59. The Committee therefore holds that there is a violation of Article 2§2 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 4§2 OF THE CHARTER

60. Article 4§2 of the Charter reads as follows:

> **Article 4 –The right to a fair remuneration**
>
> Part I: "All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families."
>
> Part II: "With a view to ensuring the effective exercise of the right to fair remuneration, the Parties undertake:
>
> […]
> 2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
> […]"

A – ARGUMENTS OF THE PARTIES

1. The complainant organisation

61. EUROMIL alleges that the pay of members of the Defence Forces has traditionally been adjusted in line with the pay movements of other public servants, principally civil service grades. A number of reviews has taken place regarding the pay of members of the Defence Forces, with the last being the Report of the Commission on the Defence Forces in February 2022 (see §18 above), although this report was confined to reviewing pay structures, as opposed to pay rates. Prior to this report, the Report of the Public Service Pay Commission was published in May 2019 (see §15 above).

62. EUROMIL also states that Permanent Defence Forces Other Ranks Representative Association of Commissioned Officers (PDFORRA) highlighted the disparity of treatment of members of the Defence Forces as compared to other workers in submissions to the Public Service Pay Commission in 2018 and the Commission on the Defence Forces in 2021. Equally, the Representative Association of Commissioned Officers (RACO) has also highlighted the prohibition of the payment of overtime to Defence Forces personnel in its submissions to the Public Service Pay Commission and the Commission on the Defence Forces, which has been grounded in the failure to adequately record the working time of Permanent Defence Forces personnel.

63. EUROMIL states that the Commission on the Defence Forces noted in February 2022 that a number of European armed forces have compensatory mechanisms that are compatible with military service in Ireland and in line with public sector pay policy. It is the strong assertion of EUROMIL that the payment of overtime is included in these compensatory mechanisms.

64. EUROMIL therefore claims that members of Defence Forces should be entitled to overtime payments or a premium payments regime that is appropriate and negotiated. However, EUROMIL asserts that the Government fails to provide adequate remuneration, via overtime payments or in time in lieu, to personnel undertaking duties for a duration of 24 hours and greater and personnel do not receive a premium for working overtime hours even where time off in lieu and premium payments are included. EUROMIL submits that the nature of duty rosters within the Irish Defence Forces effectively results in personnel undertaking three normal days' work in one 24-hour period. However, the resulting time off is equivalent to one normal day's work. Additionally, the duty allowances provided do not equate with the value of a day's pay.

65. EUROMIL further states that members who undertake duty in Portlaoise Prison commence work for 72 hours at a time. This period of duty is followed by a period of 72 hours of rest. During the period the members of the Defence Forces are on duty, they are paid their daily rate of pay and receive a flat rate allowance, which is less than the equivalent daily rate of pay. Upon the expiry of the total tour of duty (which is 72 hours), they receive one day off per tour of duty.

66. EUROMIL also states that the Government fails to recognise the right of workers to an increased remuneration for overtime work and does not engage in adequate discussions on the provision of overtime through the Conciliation and Arbitration Scheme. While the Conciliation and Arbitration Scheme exists for members of the Defence Forces, this body is obliged to act in accordance with wider public sector pay policy and has a number of limitations imposed upon its scope. The most pressing of these restrictions is the generalised prohibition on the initiation of claims by the representative associations relating to overtime payments. EUROMIL is of the view that the ban on discussing overtime as part of the Scheme for Conciliation and Arbitration is unreasonable, disproportionate and unnecessary to the aim to be achieved when compared to the scope given to all other public servants and members of the security services. So is the failure to conclude collective agreements pertaining to working overtime. Finally, EUROMIL alleges that the Government fails to record the working hours of personnel in an agreed manner with the representative associations thus preventing the adequate compensation for overtime.

67. EUROMIL also asserts that the Representative Associations in Ireland have confirmed that, while they have no particular difficulty in maintaining a flexible working regime as necessary for the preservation of State security, the basis upon which their members can be recalled to duty outside of "normal" working hours is not codified, and results in an unreasonable level of disruption to the lives of its members and their families.

68. EUROMIL states that allowances linked to rank are very small, and in any event do not compensate for the level of overtime undertaken comparable to the daily rates of pay. In other areas of the public sectors where similar complex arrangements have existed, public servants have managed to secure increased payments through recourse to the Workplace Relations Commission as in the case of the sleepover allowance for care workers. However, for the members of the Defence Forces, there has been a longstanding and continued complication of the payments regime, which denies them appropriate payments for additional hours worked. EUROMIL explains that specifically, the current remuneration arrangements for members of the Irish Naval Service and Ordnance Corps make it particularly difficult to calculate the overall rates of pay and current arrangements in no way compensate for overtime/hours worked.

69. EUROMIL submits that the members of the Defence Forces are equally entitled to the protections afforded to other workers concerning the fairness of pay rates and protections as other public servants.

2. The respondent Government

70. The Government states that beyond the typical working week of 40 hours, members of the Defence Forces are called upon to carry out other duties for which various allowances are payable. The Government provides examples of those allowances. MSA is designed to compensate members of the Defence Forces for the special disadvantages associated with military life, and it is an integral part of salary. SDA is paid in respect of a wide range of security duties which personnel are detailed to perform outside of normal duty hours. Maintenance of Essential Services Allowance is payable to members of the Permanent Defence Forces who maintain essential services during industrial disputes or when undertaking other duties at the request of the civil authorities. Aid to Civil Authority Allowance is paid to enlisted personnel when the Defence Forces periodically provide essential services in public emergencies. Daily diving allowance is paid to qualified Naval Service divers engaged in diving duties. Explosive Ordnance Disposal Duty Allowance is paid to ordnance corps personnel engaged in bomb disposal work in respect of each day spent on rostered 24-hour bomb disposal duties. The Army Ranger Wing Allowance is an allowance specific to the Army Ranger Wing.

71. The Government submits that the rates of pay vary in accordance with the level of seniority of the member and are thus linked to the level of basic wage. Payment for such duties would amount to more than a 10% increase to the basic rate of pay. The Government provides an example of pay of a three-star private on point one of the pay-scale. Their basic weekly pay is €560.32 for a typical 40-hour week, which is an hourly rate of €14. When MSA (€151.59 per week or €3.78 per hour) and SDA (at a rate for 24 hours between Monday and Saturday, so €61.56 or €2.57 per hour) is added to this, the rate per hour for the 24-hour duty is €20.36. This is more than a 10%

increase to the basic rate of pay, which was held to be a minimum rate for overtime in European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 23 October 2012, §77.

72. The Government submits that, unlike other areas of the public service, and due to the nature of the duties performed, overtime payments are not available to members of the Defence Forces. The Commission of the Defence Forces in its report of February 2022 recommended the introduction of a (non-financial) labour hours budget for managers that would ensure that the time of Defence Forces personnel is managed appropriately and efficiently by the Government, by service commanders, and by those assigning duties at a local level. The Government therefore states that the Commission recognised that an overtime mechanism would not be appropriate for many aspects of the duties of the Defence Forces and an alternative mechanism would be best negotiated between management and the representative associations.

73. The Government further submits that the Defence Act 1990 and Defence Force Regulations S6 provided for the establishment of representative associations for members of the Permanent Defence Forces. The associations that have since been established are PDFORRA and RACO. A conciliation and arbitration scheme for members of the Permanent Defence Forces provides for a formal mechanism for the determination of claims and proposals from the Permanent Defence Forces representative associations relating to remuneration and conditions of service. The scheme operates on the basis of a signed Agreement between the Official/Management side and the staff side. The conciliation and arbitration scheme has provided the framework to progress many successful negotiated agreements between Defence management and the Permanent Defence Forces representative associations. The scheme provides that while, due to the nature of military service, claims for overtime payments may not be entertained, claims for specific allowances for any type of duty, including those duties which by their nature involve long hours, may be submitted.

74. The Government states that in 2019, the Defence Forces, in correspondence with PDFORRA and RACO, proposed that a 24-hour barrack duty would be applied as follows: a rest day following a 24-hour duty in barracks will be allowed following the completion of a 24-hour duty in barracks; a day in lieu, additional to the rest day currently allowed in respect of weekend 24-hour barrack duties, this additional day will be continuous with the rest day; subject to the exigencies of service, a Unit Commander may order that this additional day be deferred for a minimum period necessary, of up to 14 days (see §16 above).

75. The Government states that there are discussions on methodologies for recording time and attendance. The officials in the Department of Defence are engaging with military management on the possibility of applying an interim enhanced time recording measure.

76. The Government also argues that retaining flexibility of working hours beyond the typical working day pursues the legitimate aim of public safety and national security and is proportionate to the legitimate aim sought to be achieved, therefore the criteria of Article G are met.

B – Assessment of the Committee

77. The Committee recalls that under Article 4§2 of the Charter overtime work is performed in addition to normal working hours (Conclusions I (1969), Statement of Interpretation on Article 4§2). The principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who should be paid at a rate higher than the normal wage (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2).

78. The Committee must also examine whether those concerned receive remuneration for overtime worked and, above all, whether this is at a higher rate than their normal pay (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, §35). Where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions XIV-2 (1998), Belgium). Mixed systems for compensating overtime, for example where an employee is paid the normal rate for the overtime worked but also receives time in lieu, are not contrary to Article 4§2 (European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, decision on the merits of 17 October 2011, §21).

79. The Committee has held that agreements with varying weekly working hours between specified minimum and maximum figures without any of those hours counting as overtime do not, as such, constitute a violation of Article 4§2, provided that maximum weekly (less than 60) and daily (up to 16) working hours are respected; flexibility measures operate within a legal framework providing adequate guarantees which clearly circumscribe the discretion left to employers and employees to vary, by means of collective agreement, working time; flexible working time arrangements provide for a foreseeable reference period for the calculation of average working time (Conclusions 2014, Portugal).

80. The Committee has also considered that it is possible to have exceptions to an increased rate of remuneration for overtime work in certain specific cases. These special categories have been defined as “state employees, and management executives of the private sector” (CESP v. France, Complaint No. 57/2009, op. cit., §42). However, this is only applicable for the category of senior officials. Exceptions to a higher rate of overtime pay for all State employees or public officials, irrespective of their level of responsibility, are not in conformity with Article 4§2 of the Charter (Conclusions XV-2 (2001), Poland).

81. Finally, the Committee recalls that restrictions to an increased remuneration for additional hours of work can exist only if they are provided by law, pursue a legitimate aim and are proportionate to that aim (CGT v. France, Complaint No. 55/2009 op. cit., §§87-89).

82. Turning to the circumstances of the present case, the Committee notes that members of the Defence Forces are paid different allowances, depending on the functions they carry out, and some of those allowances are doubled when work is carried out on Sundays and Defence Forces/public holidays. The Committee also notes that these military allowances fall into three main categories: payments in the nature of pay, including payments for duties and deployments; payments in respect of skills required in the Defence Forces, i.e. specialist posts; payments in respect of reimbursement type expenditure, e.g. travel, overseas financial support packages (see §15 above). The Committee further notes that while, for example, the Security Duty Allowance is doubled for work attaining 24 hours, the other allowances are in no way related to the time worked.

83. In that connection, the Committee notes that, as of 20 January 2025, the Organisation of Working Time Act applies to the Defence Forces, with certain exceptions (see §12 above). The maximum weekly working hours allowed are therefore 48, including overtime, for those members of the Defence Forces that are now covered by the Organisation of Working Time Act. However, it is unclear what is the average overtime worked by the members of the Defence Forces now included in the scope of the Organisation of Working Time Act and especially by those excluded from the scope of the Organisation of Working Time Act. The absence of the system of recording time and attendance, which the Government recognises, makes it impossible to determine the overtime actually worked and therefore the overtime to be paid for.

84. The Committee takes an example provided by the Government of the pay of a three-star private on point one of the pay-scale. It is clear that such a member of the Defence Forces would receive the basic weekly pay and MSA, which, according to the information provided by the Government, would come at an hourly rate of basic pay of €14 and hourly MSA rate of €3.78. As noted above, for such three-star private on point one of the pay-scale, no increased rate of remuneration is paid for overtime. The example provided by the Government includes SDA which, however, is not paid in all cases but is related to the specific functions carried out.

85. While the Committee takes note of the different allowances paid to the members of the Defence Forces, it also considers that those allowances are not intended to compensate for overtime but are rather paid for the performance of specific tasks. Moreover, such allowances are not paid to all members of the Defence Forces, and it

is possible that a member only receives the basic pay and MSA which is, as stated by the Government, an integral part of the salary of a member of the Defence Forces. MSA cannot be therefore considered as payment for overtime because it is always the same and changes only depending on the rank of the member of the Defence Forces. Even considering that the other allowances are intended to compensate for the overtime worked, without a system of recording working time in place it is impossible to determine whether such allowances are paid at a higher rate than normal pay because it is unclear what the exact number of hours of overtime worked is.

86. The Committee also takes note of EUROMIL's claim that there is no adequate remuneration for overtime or increased time off for members of the Defence Forces carrying out duties for a duration of 24 hours or more. In that regard, the Committee takes note of the information that, with regard to the duties of the members of the Defence Forces of the duration of 24 hours, as of August 2019, a rest day following a 24-hour duty in barracks is allowed following the completion of that duty, and, if 24-hour duty in barracks is carried out on a weekend, this additional day is continuous with the rest day (see §16 above). It therefore appears that, if a member of the Defence Forces is on a 24-hour duty in barracks on a weekend, they get two days of rest, which is longer than the number of hours worked. However, if 24-hour duty in barracks is carried out on a weekday, only one day of rest is provided, which is not longer than the time worked and therefore cannot be regarded as adequate compensation for overtime. With regard to duties exceeding 24 hours, the only concrete example provided by EUROMIL of such duty is the duty at the Portlaoise Prison. However, the Committee notes that, as of the end of September 2024, the Defence Forces are no longer providing armed guard at that prison and therefore the issue no longer exists in relation to the Portlaoise Prison.

87. The Committee notes that, according to the Government, overtime payments are not available to the members of the Defence Forces. Moreover, the issue of overtime payments cannot be discussed as part of the Scheme for Conciliation and Arbitration. The Organisation of Working Time Act is also silent on the compensation for overtime, monetary or otherwise.

88. The Committee notes that the members of the Defence Forces can be required to work long hours which are not recorded because there is no system of recording time and attendance, which then leads to the absence of any mechanism to limit or compensate for such hours. In this regard, the Committee reiterates that the different allowances paid to the members of the Defence Forces cannot be considered as overtime payments as they are not paid consistently to all members of the Defence Forces who work long hours. Also, as stated above, the only allowance that is paid to all members of the Defence Forces is MSA. However, this is a flat rate allowance that does not necessarily compensate the overtime work and increases only depending on rank.

89. Furthermore, with regard to the ban on discussing overtime payments as part of the Scheme for Conciliation and Arbitration, the Committee notes that this ban effectively removes the issue of overtime payments from meaningful negotiation. Also, the lack of the possibilities to discuss overtime payments and thus to address the grievances related to pay for overtime work denies the members of the Defence Forces to seek any redress in terms of fair compensation for overtime work.

90. The Committee considers that these two issues combined -namely the lack of overtime payments for members for the Defence Forces and the ban on discussing them as part of the Scheme for Conciliation and Arbitration − prevents the members of the Defence Forces from having any effective review or redress, even where remuneration conditions are clearly unfair.

91. The Committee further considers that Article 4§2 of the Charter imposes on the States a positive obligation to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases. Such exceptions should be interpreted narrowly and any restrictions on the right to an increased rate of remuneration for overtime work should be provided by law, pursue a legitimate aim and be proportionate to that aim and should not undermine the requirement of increased compensation for longer hours worked. According both to EUROMIL and the Government, overtime payments are not available to any of the members of the Defence Forces. Therefore, the restriction is extremely broad. The Committee also notes that there is no provision in national legislation that expressly excludes overtime payments for members of the Defence Forces. The absence of overtime remuneration is a result of an administrative practice and internal policy of the Defence Forces. Even considering that the specific function of the Defence Forces and military service in general could justify an exception, it is not clearly defined. Combined with the ban on discussing overtime payments as part of the Scheme for Conciliation and Arbitration, such absence of overtime remuneration does not meet the requirement of Article G to be provided by law.

92. In these circumstances, the Committee considers that effective implementation of Article 4§2 of the Charter cannot be ensured and considers that the lack of provisions regarding compensation for overtime is contrary to Article 4§2 of the Charter.

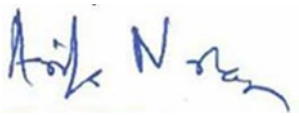
93. The Committee therefore holds that there is a violation of Article 4§2 of the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 2§2 of the Charter in respect of members of the Defence Forces who do not receive additional allowances related to specific functions;

- unanimously that there is a violation of Article 4§2 of the Charter with regard to the lack of provisions regarding compensation for overtime.



Yusuf BALCI	Aoife NOLAN	Henrik KRISTENSEN
Rapporteur	President	Executive Secretary