



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

15 May 2018

**Case Document No. 1**

**EUROMIL v. Ireland**  
Complaint No. 164/2018

**COMPLAINT**

**Registered at the Secretariat on 23 April 2018**





**EUROMIL aisbl**

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*To the Executive Secretary of the European Committee of Social Rights*

Brussels, 19 April 2018

## **EUROMIL against Ireland**

### **Complaint**

The collective complaint launched by the European Organisation of Military Associations (EUROMIL) against Ireland deals with the fact that members of the Irish Defence Forces do not have the ability to discharge from the armed forces on grounds of conscientious objection and have this reason recorded.

### **Summary**

EUROMIL launches a collective complaint against Ireland to grant members of the Irish Defence Forces, more specifically the members of the Irish Defence Forces represented by the Permanent Defence Force Other Ranks Representative Association (PDFORRA), the ability to discharge on grounds of conscientious objection and have this reason recorded in their discharge papers. Additionally, Ireland has not provided a regulatory framework to have such requests assessed and considered.

While members of the Irish Defence Forces may purchase their discharge on a scale set out in Defence Force Regulations A.10, no specific provision is made for personnel who may wish to discharge on conscientious objector grounds.

Articles violated are Articles 1(2) & 26(2) of the European Social Charter (ESC).

### **Admissibility**

Ireland ratified the Revised European Social Charter on 4 November 2000 which entered into force in the country on 1 January 2001. Ireland also ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints on 4 November 2000.

EUROMIL is a European non-governmental organisation which has participatory status with the Council of Europe. It is included in the list of international non-governmental organisations entitled to lodge complaints under the Additional



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Protocol to the European Social Charter Providing for a system of collective complaints.

Founded in 1972, EUROMIL is an umbrella organisation composed of military associations and trade unions. It is the main Europe-wide forum for cooperation among professional military associations on issues of common concern.

EUROMIL strives to secure and advance the human rights, fundamental freedoms and socio-professional interests of military personnel of all ranks in Europe. It promotes the concept of "Citizen in Uniform". As such, a soldier is entitled to the same rights and obligations as any other citizen. EUROMIL particularly calls for recognition of the right of servicemen and -women to form and join trade unions and independent associations and for their inclusion in a regular social dialogue by the authorities.

### **Background Ireland**

The conduct of all Irish Defence Forces personnel is governed by the Defence Act 1954 (as amended). Among its members, EUROMIL counts PDFORRA, the Irish association representing Enlisted Personnel of the Defence Forces, which was established in 1990 under the Defence (Amendment) Act 1990; specifically, Defence Force Regulation S.6.

Section 81 of the Defence Act, which provides:

*"(1) A man shall not be discharged from the Permanent Defence Force or the Reserve Defence Force except in pursuance of—*

*(a) a direction under section 73, or*

*(b) an order of the prescribed military authority under section 80, or*

*(c) a sentence of discharge with ignominy from the Defence Forces or of discharge from the Defence Forces imposed by a court-martial.*

*(2) The Minister may make regulations as to the manner in which and the persons by whom the discharge of men is to be carried out.*

*(3) Until the discharge of a person who is a man of the Permanent Defence Force or the Reserve Defence Force is carried out in accordance with regulations made under subsection (2) of this section, such person shall remain a man of the Permanent Defence Force or the Reserve Defence Force (as the case may be).*"

Moreover, Defence Force Admin Instruction A.10 provides:

Discharge by Purchase is curtailed during a "period of emergency"- Admin Instruction paragraph 434 refers.



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EUROMIL suggests that the amendment of DFR A.10 could be undertaken quite simply by the inclusion of an additional subsection under Para 58. Reference could be made to the potential for discharge on this ground where a *bona fide* objection is held by an applicant and this has been certified by a recognised body tasked with reviewing these cases.

The failure to provide for such an eventuality may result in explicit recognition by international bodies of potential failings. Moreover, EUROMIL would ask that cognizance be taken of the exclusion of members of the Defence Forces from the protections afforded under section 42. (1) of the Irish Human Rights and Equality Commission Act 2014, which provides:

A public body shall, in the performance of its functions, have regard to the need to:

1. Eliminate discrimination,
2. Promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
3. Protect the human rights of its members, staff and the persons to whom it provides services.

However, a specific provision under the aforementioned legislation, excludes, members of the Defence forces from the aforementioned protections.

## **Violation of the European Social Charter**

Article violated is article 1(2) of the European Social Charter on "The right to work".

### **Aim of collective complaint:**

#### **To provide for a system of discharge and registration of discharge on grounds of Conscientious objection**

This includes:

**"With a view to ensuring the effective exercise of the right to work, the Parties undertake: - to protect effectively the right of the worker to earn his living in an occupation freely entered upon"**

### **Arguments**

1. Conscientious objection is a human right. The right of conscientious objection is a fundamental aspect of the right to freedom of thought,



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conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.

2. EUROMIL claims that the amendment of DFR A.10 could be undertaken quite simply by the inclusion of an additional subsection under Para 58. Reference could be made to the potential for discharge on this ground where a *bona fide* objection is held by an applicant and this has been certified by a recognised body tasked with reviewing these cases.
3. EUROMIL believes that there exists an onus on the Department to provide an exit mechanism for personnel of the Irish Defence Forces where for Moral, Political or Religious grounds these personnel decide in good conscience that they do not wish to serve.
4. Further to the Departments contention, regarding the ability of personnel to discharge by purchase, EUROMIL wishes that the right of personnel to Discharge by Purchase is curtailed during a "period of emergency"- Admin Instruction A.10 paragraph 434 refers.
5. The failure to provide for discharge on grounds of conscientious objection may inhibit the discharge of personnel who, for example, wish to discharge for religious reasons, i.e. conversion during service to a different religion, for example Jehovah's witness.
6. Personnel who enlisted in the Defence Forces post the enactment of the Defence (Amendment) (No.2) Act 1960 are liable for mandatory selection for peacekeeping duties outside of the State. For personnel who enlisted for service after the 1<sup>st</sup> of July 1993, mandatory selection may be made in Peace enforcing missions.
7. The right to freedom of thought, conscience and religion enshrined in Article 18 of the International Covenant on Civil and Political Rights. The failure to provide for conscientious objection is contrary to UN Resolution 1995/83, which provides for conscientious objection for personnel in service.
8. While ordinarily the concept of conscientious objection pertains mainly to countries where conscription is used as method to have citizens serve in the armed forces, the principle, whereby serving personnel can depart the armed forces on grounds of conscientious objection has been extended through recognition of UN Human Rights Commission Resolution 1998/77.
9. The exercise of the right of conscientious objection to military service has been an ongoing concern of the Council of Europe for over forty years. Council of Europe Parliamentary Assembly Recommendation 1742(2006), resulted in calling on member states by the Parliamentary Assembly of the Council of Europe to



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*"[i]ntroduce into their legislation the right to be registered as conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted status of conscientious objector".*

10. The Committee of Ministers of the Council of Europe adopted in their Recommendation CM/Rec (2010)4 on human rights of members of the armed forces that "H. Members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9, paragraph 2 of the European Convention on Human Rights."

Particularly:

*42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.*

*43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.*

*44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.*

11. The amendment of the governing regulation could be undertaken quite simply and the failure to agree on an amendment within the confines of the Conciliation and Arbitration Scheme is capricious and arbitrary as paragraph 19(1) (A) (q) of the Conciliation Scheme for Members of the Defence Forces provides for discussion on "*Changes in retirement ages and procedures regarding voluntary retirement, resignation or discharge*".

## **Violation of the European Social Charter**

Article violated is article 26 (2) of the European Social Charter on "the right to dignity at work".

### **Aim of collective complaint:**

**To provide for a system of discharge and registration of discharge on grounds of conscientious objection**

This includes:

**"to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed**



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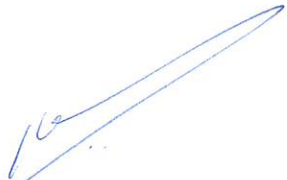
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**against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.”**

## **Arguments**

1. Failure to provide for recognition of a persons' conscientious objection, especially in a military context, unnecessarily exposes personnel to accusations of cowardice and ridicule.
2. The refusal to amend current Defence Force Regulations constitutes a failure to take appropriate measures.
3. Defence Force Regulations A.7 and Section 114(2) of the Defence Act do not provide adequate protections to the insult to the dignity of the person and do not constitute a protectionist measure as they are reactionary in nature.
4. No education, or information on conscientious objection is provided to members of the Defence Forces. The Committee of Ministers of the Council of Europe adopted in their Recommendation CM/Rec (2010)4 on human rights of members of the armed forces that "H. Members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9, paragraph 2 of the European Convention on Human Rights."  
Particularly:  
*46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.*
5. The failure to engage with the representative body is disproportionate given the ease by which the matter could be addressed.



Emmanuel JACOB,  
President



Jörg GREIFFENDORF,  
Vice-President