



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

3 May 2019

**Case Document No. 4**

**European Organisation of Military Associations (EUROMIL) v. Ireland**  
Complaint No. 164/2018

**RESPONSE FROM EUROMIL TO THE GOVERNMENT'S  
SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 11 April 2019**





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Brussels, 11 April 2019

**Response to the submission of the Irish Government**  
**on the merits of the complaint of**  
**EUROMIL v. Ireland, N° 164/2018**

**Introduction**

EUROMIL, on behalf of PDFORRA, the Association representing Enlisted Soldiers, Sailors and Aircrew within the Irish Defence Forces, wishes to make the following observations on the submission made by the Irish Government on the 13 February 2019.

- 1.1 Conscientious Objection has no legal definition within the Irish Defence Forces as it is not provided for; however, in Canada, conscientious objection is legally defined as "*a sincerely held objection to participation in war or armed conflict in general; or the bearing and use of arms as a requirement of service in the Canadian Forces*"<sup>1</sup>.
- 1.2 Within Finland, the Conscription Act (1438/2007) provides that "*a person liable for military service who asserts that serious reasons of conscience prevent him from performing armed military service and who applies for unarmed service will be exempted from armed service and assigned to unarmed service.*"<sup>2</sup>
- 1.3 In Germany, article 4 (3) of the Constitution provides "*no person shall be compelled against his conscience to render military service involving the use of arms.*"<sup>3</sup>
- 1.4 In the United States, the legal definition of a conscientious objector is set out in Department of Defense instruction 1300.6, which is based on the conscientious objector provisions in the Military Selective Service Act. Under the instruction, a conscientious objector is a person who has "*a firm, fixed, and sincere objection to participation in war in any form or the bearing of*

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<sup>1</sup> Conscientious Objection to Military Service, United Nations, New York and Geneva, 2012, p. 53

<sup>2</sup> Ibid 1

<sup>3</sup> Ibid 1



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*arms, by reason of religious training and/or belief*". People who object to war "solely upon considerations of policy, pragmatism, expediency, or political views" do not qualify.<sup>4</sup>

1.5 The important distinction in respect of the foregoing legal definitions is the fact that provision is made for conscientious objection even in times of relative peace and in circumstances where personnel are currently serving. Ireland provides no such relief or distinction.

1.6 In fact, the current regulatory provisions mean that it would be more difficult to leave the Defence Forces at a time when personnel may encounter a crisis of conscience as opposed to during peacetime.

1.7 Ireland has ratified the Universal Declaration of Human Rights through the European Convention on Human Rights.

1.8 The United Nations Human Rights Commission, having considered the report of the Secretary-General (E/CN.4/1997/99), resolved:

*"[t]hat conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives,*

*Aware that persons performing military service may develop conscientious objections...*

*(1) Draws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights*

*(3) Calls upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;"*

1.9 While EUROMIL appreciates that those resolutions of the Commission, and its successor, the Council, are not legally binding in international law, there does exist a moral obligation to comply with the spirit of the resolutions.

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<sup>4</sup> Ibid 1



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1.10 Notwithstanding the foregoing, the departure from any employment is a process that should be fluid and capable of accommodating the needs of the worker during the transition from one employment to another. Termination of employment protocols remain part of most employment relationships and should cater, to the greatest extent possible, for the appropriate recognition of the rationale behind the departure of any employee.

## **2 Regarding the observations made by the Government pertaining to Article 1(2)**

2.1 The Complaint submitted by EUROMIL on behalf of PDFORRA is premised upon the fact that no provision exists for the discharge of personnel on grounds of conscientious objection. In an attempt to identify the nexus between the complaint made by EUROMIL and the circumstances prevailing within the Irish Defence Forces the following must be considered:

2.2 The right to work has a juxtaposed entitlement to cease working where the continued maintenance of the employment relationship is not freely agreed/desired.

2.3 That the ability to discharge by purchase during a period of emergency is curtailed. The foregoing places on indefinite obligation of service on personnel in circumstances where *bona fide* objections to such service may exist. The Complainant believes that it is prudent that provision for discharge on grounds of conscientious objection should be made during peacetime, in addition to a time when an emergency or state war may exist.

2.4 The foregoing fact, as pointed out in Para 16 of the Government's submission, that the reasons for discharging are personal, result in the fact that nobody can discharge on grounds of conscientious objection - as no statutory provision exists for same. Personnel may, within the limitations set out within Defence Force Regulations and the Associated Administrative Instructions, discharge by purchase for every other reason (where financial circumstances permit) apart from that of conscientious objection. In the foregoing respect, the commentary of the UN Human Rights Committee in regards a State report on Spain is relevant; insomuch as, they observed that:

*[...] is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22.*



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*The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.*<sup>5</sup>

- 2.5 The Government makes the assertion that members are free to seek their discharge. This statement is correct. However, what the Department of Defence has failed to address within their response is the fact that despite an entitlement to discharge this entitlement can be curtailed, even in peacetime, as provision is made to refuse discharge for periods of up to 90 days- Defence Force Regulation A.10, Annex "KK" Part 8, (18).<sup>6</sup>
- 2.6 Moreover, while the Government's response details that personnel can leave for "*moral reasons or otherwise*"; however, no explicit provision exists for discharge on grounds of conscientious objection. While EUROMIL accepts that personnel may discharge, subject to those caveats set out herein, EUROMIL firmly believes that there remains a moral and humanitarian obligation to provide for release from active service on specific grounds, at all times. This, in essence, is the link between the complaint made and the impugned conduct.
- 2.7 The response of the Government makes repeated reference to the lack of requirement to render compulsory military service. It is respectfully submitted, military service is compulsory when one enters the armed forces - as failure to follow orders becomes punishable by summary trial or court martial in the absence of an ability to depart from military service, or undertake alternative service.
- 2.8 As outlined above, in certain circumstances personnel may not be in a position to purchase their discharge. As no provision is made for conscientious objection, no alternative employment can be chosen in lieu of military service even in circumstances where genuine conscientious objection may exist. Additionally, it must be considered that in 2010, the Committee of Ministers of the Council of Europe adopted a recommendation, which states, "*professional members of the armed forces should be able to leave the armed forces for reasons of conscience.*"<sup>7</sup>
- 2.9 EUROMIL believes that consideration must be given to the fact that personnel may not have the financial means to purchase their discharge from the Defence Forces at a time when they conscientiously object to

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<sup>5</sup> CCPR/C/79/Add.61, paras. 15 and 20. Although Spain abolished conscription in 2001, at the time of the adoption of these concluding observations Spain had compulsory military service.

<sup>6</sup> Annex A

<sup>7</sup> Recommendation CM/Rec(2010)4 of the Committee of Ministers to member States on human rights of members of the armed forces, para. 4



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service. Within the armed forces, in such circumstances it is reasonable to protect the interests of the individual and the State by having a Board designed to assess the *bona fides* of applicants for conscientious objection.

2.10 Moreover, it must be considered that the regulatory provisions, as outlined above, may result in compulsory service at a time when the individual has no desire to continue service. This would in the absence of complicity with orders, render personnel liable to penalty under military law- as no defence of conscientious objection could be raised - as it is not provided for under regulations. The following observation is made by the United Nations Human Rights Committee:

*"Many States take the position that the question of conscientious objection to military service applies only to conscripts and that, since their armed forces are based on volunteers, the issue of conscientious objection to military service does not arise. A limited number of States, including Canada, Croatia, Germany, the Netherlands, the United Kingdom and the United States, recognize that professional military personnel may become conscientious objectors during their service. This recognition is based on the right to change one's religion or belief, and the fact that an individual's deeply held convictions can evolve and change over time. It is essential to decide applications from individuals serving voluntarily in the armed forces expeditiously, both for the applicant and for the armed forces. Moreover, while the application is under consideration it is also advisable to make efforts not to give orders and assignments incompatible with the reasons for the objection."*<sup>8</sup>

2.11 The ECSR has previously held that forced service in circumstances where personnel are refused right to seek termination is a breach of Article 1 (2) -Conclusions 2004, Ireland, p. 260.<sup>9</sup>

2.12 The ability to conscientiously object to service is not confined to conscription or compulsory service- as recognised by the United Nations. The Human rights Committee of the UN observed that:

*"It should be recalled that the right to change one's religion or belief is stated in article 18 of the Universal Declaration of Human Rights and*

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<sup>8</sup> Conscientious Objection to Military Service, United Nations, New York and Geneva, 2012, p. 55

<sup>9</sup> In its last conclusion, under the 1961 Charter, the Committee found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence. This could lead to a period of service, which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.



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*elaborated in the Human Rights Committee's general comment No. 22 (1993):*<sup>10</sup>

*The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.*<sup>11</sup>

2.13 The concept of voluntary labour exists on a spectrum and should permit the termination at will by the worker. However, what the Department of Defence failed to address in their previous response is that despite an entitlement to discharge this entitlement can be curtailed, even in peacetime for periods of up to 90 days- Defence Force Regulation A.10, Annex "KK" Part 8, (18). Moreover, EUROMIL believes that the foregoing position is reflected in UN Resolution 1993/84, where it was observed that:

*"[p]ersons performing military service may develop conscientious objection.."*<sup>12</sup>

2.14 The rebuttal by the State presupposes that personnel have the financial means to purchase their discharge.

2.15 The United Nations Human Rights Committee made the following observations regarding voluntary servicemen and women *"Many professional armed forces enable their members to leave, whether at the end of a contract period or earlier by mutual agreement. They may also enable a person who develops an objection to bearing arms to transfer to non-combat duties. In order to deal with such situations, including in particular in times of war, procedures should be specified in advance for how conscripts or military personnel serving voluntarily can apply for conscientious objector status after they have joined the armed forces. Reservists, too, may become conscientious objectors and, therefore, provision needs to be made to enable them to be recognized as such."*<sup>13</sup>

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<sup>10</sup> The American Convention on Human Rights and the European Convention on Human Rights also recognize the right of an individual to change his or her religion or beliefs

<sup>11</sup> Conscientious Objection to Military Service, United Nations, New York and Geneva, 2012, p. 25

<sup>12</sup> See also its resolutions 1995/83 and 1998/77

<sup>13</sup> Conscientious Objection to Military Service, United Nations, New York and Geneva, 2012





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### **Regarding the Government's observations on Article 26 (2)**

3. As previously asserted, the absence of an ability to discharge from the Defence Forces for reasons of conscientious objection exposes personnel to ignominy; insomuch as, any person who may wish to discharge for moral, religious or reasons of conscience may not do so on those grounds. In fact, it is left open to conjecture in the absence of a statutory provision providing for discharge on conscientious objection grounds.

3.1 It must also be considered that Ireland has the following offence within its Defence Act 1954: Incitement to Disaffection contrary to Section 254. The United Nations Human Rights Committee made the following observation in respect of this type of charge:

*"Some States have laws on "incitement to disaffection" or similar provision which could be misused to criminalize the distribution of information on the right to conscientious objection."*

3.2 In the absence of a provision for conscientious objection, EUROMIL believes that the Government exposes personnel to the potential for ridicule and speculation for failing to undertake duties that they may otherwise be legally and duty bound to undertake.

3.3 Moreover, it must be considered that serious penalties exist for failure to undertake duties that one is required to do, which may include dishonourable discharge from the Defence Forces. This would have serious adverse consequences for future employment.

3.4 Personnel are issued with discharge testimonials upon discharge from the Defence Forces, these record the reasons for discharge. The absence of a provision for discharge for reason of conscientious objection could give rise to speculation on the part of prospective employers where the reason for previous termination is not recorded appropriately.

### **Conclusion**

4. For those reasons provided herein, EUROMIL requests that the Committee uphold the complaints made under Articles 1(2) and 26 (2) of the Charter.



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## **Annex A**

'A' Administrative Instructions Part 10  
Dated 30 Oct 87

Annex 'KK'

AF 97C

**APPLICATION FOR DISCHARGE BY PURCHASE**

**(DFR A.10 PARA 58H AND PARAGRAPH 61)**

1. Members who wish to apply for Discharge by Purchase shall be required to make written application on Part one of AF 97C.
2. Part Two shall then be completed at Unit HQ.
3. No other supporting documents will normally be required. Inapplicable words (mark\*) may be deleted).
4. Following payment of the relevant purchase price to An Rúnai, AF 97C shall be re-submitted to OIC Records, together with AF 97 and receipt of payment.

**PART ONE - PERSONAL APPLICATION FOR DISCHARGE BY PURCHASE**

Sub Unit Commander's comments.

TO: OC \_\_\_\_\_ THROUGH:

I hereby apply for my discharge by purchase for the following reasons:-

SIGNED \_\_\_\_\_ RANK  
DATE \_\_\_\_\_

SIGNED \_\_\_\_\_ RANK  
APPOINTMENT  
DATE \_\_\_\_\_

**PART TWO - PERSONAL DETAILS OF APPLICANT**

(For completion at Unit HQ)

SERVICE NO \_\_\_\_\_ RANK  
NAME \_\_\_\_\_ ENLISTED  
DUE DISCHARGE/TRDF  
MILITARY OCCUPATION

**PART THREE - PURCHASE PRICE**

Purchase Price  
Permissible Reduction  
Refund EOS Gratuity

Total

**PART FOUR** For completion by Unit Commander

TO: OC \_\_\_\_\_ BDE  
Submitted for decision.

1. Application submitted for decision.
2. Reduction in purchase price in recommended/NOT recommended/insufficient service to be eligible for reduction\*.
3. Delay in date of discharge recommended/NOT recommended\*.
4. The applicant has/has NOT signed a service undertaking\*.
5. Technicians (Group 1 and 2) only:-

SIGNED \_\_\_\_\_ RANK  
Adj/Amin Offr \_\_\_\_\_ Unit  
Date \_\_\_\_\_

He has/has NOT been fully trained in his trade in the PDF\*  
He will/will NOT use the training received after discharge -  
supporting documentation refers\*.

TO: GOC \_\_\_\_\_ COMD/FOCNS  
Submitted for decision

REMARKS

SIGNED \_\_\_\_\_ RANK  
OC \_\_\_\_\_ DATE

SIGNED  
RANK  
OC  
DATE

**PART FIVE** For use at Command/Air Corps/NS HQ  
Application forwarded for authorisation.

TO: Area Officer I/C Records  
\_\_\_\_\_ Area  
Forwarded for decision of the  
Adjutant General

6. Reduction is recommended by GOC/FOCNS \_\_\_\_\_ \*

7. Reduction NOT recommended by GOC/FOCNS \_\_\_\_\_ \*  
REMARKS

Signed \_\_\_\_\_ Rank  
Appointment  
Date

8. Delay in date of discharge recommended\*

**PART SIX** For use at Area Records

- 9. Personal details at Part one verified/amended\*.
- 10. Cost verified/amended\*.
- 11. The applicant has/has NOT signed a service undertaking (DFR CS3 Part VIII).
- 12. REMARKS

TO: OIC Enlisted Personnel Section  
Forwarded for decision of the  
Adjutant General. (Personal file  
herewith).

Signed \_\_\_\_\_ Capt  
OIC Records \_\_\_\_\_ Area  
Date

**PART SEVEN** For use in Enlisted Personnel Section.

- 13. Cost verified £
- 14. Permissible Reduction £
- 15. Refund Gratuity £
- 16. Total Cost £

TO: Deputy Adjutant-General  
Submitted for decision, please.

\_\_\_\_\_ Comdt  
OIC ENLISTED PERSONNEL  
SECTION  
DATE

**PART EIGHT - AUTHORISATION**

OIC EPS

- 17. Discharge by purchase approved/NOT approved\*.
- 18. Discharge to be delayed for 3 months\*/NOT delayed\*.
- 19. Reduction in amount payable approved/NOT approved\*.
- 20. Discharge authorisation ceases 91 days after the date of authorisation if discharge is not availed of.

TO: OIC Records \_\_\_\_\_ Area  
Transmitted for necessary action.  
\_\_\_\_\_ Comdt  
OIC ENLISTED PERSONNEL  
SECTION

DATE

TO: OC

\_\_\_\_\_ COL.  
DEPUTY ADJUTANT-GENERAL

DATE

Discharge by Purchase has been  
authorised by the Deputy Adjutant  
General. Following payment of  
£..... to An Rúnaí (A4a).  
Discharge may be applied for on  
AF 97, enclosing this AF.

SIGNED \_\_\_\_\_ CAPT  
OIC RECORDS \_\_\_\_\_ AREA  
DATE