EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

17 June 2019

Case Document No. 5

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

FURTHER RESPONSE FROM THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 7 June 2019

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Complaint Number: 164/2018

EUROPEAN ORGANISATION OF MILITARY ASSOCIATIONS (EUROMIL)

COMPLAINANT

V.

IRELAND

RESPONDENT

FURTHER RESPONSE OF THE GOVERNMENT

7 June 2019

I Introduction

Parameters of the Complaint as lodged on the 19th April 2018

1. It is important to recall the specific parameters of the Complaint submitted to the European Committee of Social Rights (the "Committee") on 19 April 2018. The scope of the Complaint was clearly confined to the allegation that Ireland has failed to allow discharge on grounds of conscientious objection and to have that reason recorded in discharge papers[1]. No challenge whatsoever was raised to the mechanism of discharge by purchase, or indeed to any of the grounds on which discharge can be granted under paragraph 58 of the Defence Force Regulations A.10[2]. Indeed, the Complaint proposed that the matter could be resolved by simply adding a subsection to paragraph 58 which would provide for discharge on the ground of conscientious objection where approved by a body tasked with reviewing such cases[3]. Any matter beyond the alleged failure to provide for conscientious objection to be recorded as a reason for discharge, is accordingly outside the scope of the Complaint.

Context

2. The Complainant places emphasis in the introduction to its Response, on the approach to conscientious objection in various other jurisdictions[4]. The purpose of this element of the Response appears to be to criticise Ireland for failing to expressly provide for discharge on grounds of conscientious objection in peacetime. It is important to note, however, that Ireland is distinct in terms of historical, political and military context. Ireland presents a particular set of circumstances[5]:

    (a) It has a long-standing policy of military neutrality;

[1] This is apparent from the first paragraph of page 1 of the Complaint lodged on 19 April 2018, as well as the second paragraph of page 2
[2] This point was made at paragraph 28 of Ireland's observations on the merits lodged on 13 February 2019, and has not been refuted by the Complainant in its Response.
[3] See first paragraph of page 2 of the Complaint lodged on 19 April 2018
[4] See paragraphs 1.1-1.6 of the Complaint lodged on 19t April 2018
[5] For further information, Ireland's 2015 White Paper on Defence is available at https://www.defence.ie/press/publications/white-paper-defence-2015

(b) It assesses the probability of conventional military attack on its territory as low[6];

(c) There is no provision in Irish law for compulsory military service;

(d) Personnel enter service voluntarily and are free to seek their discharge in accordance with the Defence Act 1954 and the Defence Force Regulations A.10.

3. The Complainant has failed to address the specific context presented by Ireland or to explain how a person who wishes to leave the military for moral reasons, might be prejudiced by Ireland's regulatory framework.

4. Furthermore, the submission made at paragraph 1.10 of the Complainant's Response is not understood. Personnel are entitled to seek discharge for any of the reasons set out in the relevant legislation, and can choose not to re-enlist after the initial period of enlistment[7]. The exit mechanisms available to personnel do not frustrate the needs of a worker transitioning to new employment. In any event, it is not accepted that traditional *"termination of employment protocols"* require the employer to record the rationale underlying an employee's voluntary decision to terminate his/her employment.

II Article 1(2)

5. It is entirely incorrect to state[8] that personnel may *"…discharge by purchase for every other reason…apart from that of conscientious objection…."* (See paragraph 2.4 of the Response). A person with a moral objection or any other objection to serving in the military, is entitled to seek discharge by purchase or to decline to re-enlist after the initial period of enlistment. Indeed, it is respectfully submitted that these exit mechanisms are less onerous than that proposed by the Complainant. They do not for instance involve interrogation by a special body of the *bona fides* of the individual's application. Furthermore, as can be seen in the scales of payment set out at paragraph

[6] See p. 17 of Ireland's 2015 White Paper on Defence at https://www.defence.ie/press/publications/white-paper-defence-2015

[7] See paragraphs 4 and 5 of Ireland's observations on the merits lodged on the 13 February 2019

[8] At paragraph 2.4 Response of the Complainant, lodged on 11 April 2019

61 of the Regulations, the financial burden (of discharge by purchase) is not onerous and is proportionate, insofar as it is appropriate to time served and category of personnel. Indeed, the amount payable can be as low as €50 for a recruit. (The highest amount payable is €6,345 in the Higher Technician class). A request can also be made for discharge on compassionate grounds under paragraph 58, in which case a person's inability to purchase by discharge will be considered.

6. The Complaint[9] and the Response[10] have proposed that a special body be established to assess the bona fides of *"applicant for conscientious objectors".* Given the minimal requirements of personnel seeking discharge by purchase or simply deciding not to re-enlist with the Permanent Defence Force, the Complainant's proposal would appear to create an additional and burdensome obstacle for those wishing to exit the force for reasons of moral objection.

7. The Complainant has failed to establish how enlistment might be considered to be *"not freely agreed/desired."*[11] The reference to an option set out in the application form for discharge by purchase, to delay discharge for three months is noted. It is general practice to facilitate discharge as quickly as possible. However, certain roles (involving particular skillsets and technical qualifications) might require delay in order to facilitate adequate replacement. This does not denote compulsory service and is a proportionate approach to protecting the needs of the service. Furthermore, it is likely that the Complainant's proposal (namely the interrogation of an applicant's bona fides by a special review body) would also be likely to cause delay in discharge. It is difficult to see how this amounts to a form of compulsory service. It certainly does not reach the threshold of a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

8. Ireland refutes the Complainant's submission (at paragraph 2.7 of the Response) that military service is compulsory upon entry to the armed forces. The Complainant's rationale is that *"...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*

[9] At first paragraph of page 3 of the Complaint lodged on 19 April 2018
[10] At paragraph 2.9 of the Response of the Complainant, lodged on 11 April 2019
[11] See paragraph 2.2 of the Response of the Complainant, lodged on 11 April 2019

alternative service." It is submitted that the Complainant is conflating the concept of compulsory service with military discipline. Any entrant will be aware of his/her obligations upon joining the military and do so of their free will. They are also free to exit the military. The submissions made at paragraph 2.10 of the Response (namely, that members of the force are at risk of penalty under military law) are misconceived. The onus is on the member to seek discharge from the military. Insofar as the Complainant appears to envisage an immediate and sudden onset of objection on the part of a member, it might be noted that a broad range of personnel support services are available to enlisted personnel, which include support in areas such as stress management and well-being.

9. It is submitted that the Complainant overstates the possibility of personnel not being a position to purchase their discharge. There is no evidence to support the case that these present sums inhibit personnel from leaving the military. It is submitted that the scales and conditions of payment are not of such a level and nature to denote compulsory service. In any event, it is recalled that the Complainant has not challenged discharge by purchase as incompatible with the Charter.

10. The Complainant's reference to the Committee's previous conclusions on forced service[12], are entirely irrelevant to this complaint. The conclusions in question concerned the requirement of army officers to remain in the Permanent Defence Force until they reach retirement age and the fact that permission to retire was often given to air corps pilots and technicians by the Minister for Defence, on the condition that they reimburse the State for part of the cost of education and training. By contrast, this Complaint does not concern army officers; it concerns only enlisted personnel. Indeed, PDFORRA does not represent army officers. Furthermore, the Complainant has mischaracterised the conclusions. The concern of the committee was that the circumstances faced by army officers might lead to a compulsory period of service which is "…*too long to be regarded as consistent with the freedom to choose and leave an occupation."* The Complainant has not identified any element of the conditions for discharge of enlisted personnel which reaches such a threshold. The possibility of a 90 day delay[13] is surely no more onerous than any conventional notice period and it is, in

[12] Paragraph 2.11 of the Response of the Complainant, lodged on 11 April 2019
[13] See paragraph 2.13 of the Response of the Complainant, lodged on 11 April 2019

any event, general practice to facilitate discharge as quickly as possible. It is difficult to see how this could possibly amount to forced labour. In any event, it is again recalled that the scope of the original complaint does not extend to a challenge to discharge by purchase.

11. In light of the foregoing, Ireland considers that the Complainant has failed to establish a sufficient nexus with Article 1(2).

III Article 26(2)

12. Ireland's previous observations had pointed out that the Complainant has failed to explain or particularise how it is alleged that personnel are exposed to accusations of cowardice or ridicule[14]. It was explained that discharge papers are private to the member in question and are not disclosed to his/her colleagues[15]. It is submitted that the Response of the Complainant sheds no further light on the basis of its complaint in this regard.

13. The Complainant alleges that the current regulatory framework gives rise to the possibility of conjecture. It is submitted that the opposite is the case. Discharge by purchase is capable of capturing all potential reasons for leaving the Defence Forces. The individual does not need to disclose reasons for discharge and discharge papers remain private to the member.

14. The relevance of Section 254 of the Defence Act 1954, as mentioned in the Response, is not apparent. That section provides:

> *"(1) Any person who by any means whatsoever incites or attempts to incite any person subject to military law-*
> *(a) To mutiny, or*
> *(b) To refuse to obey lawful orders given to him by a superior officer, or*
> *(c) To refuse, neglect or omit to perform any of his duties, or*

[14] See paragraph 16 and paragraph 30 of Ireland's observations on the merits lodged on 13 February 2019
[15] See paragraph 16 of Ireland's observations on the merits lodged on the 13 February 2019

(d) To commit any other act in dereliction of his duty,

Shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years.

(2) Any person who has, without lawful excuse, in his possession or under his control any document of such a nature that dissemination thereof amongst members of the Defence Forces would be an offence under subsection (1) of this section, shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years.

15. A request for discharge (and the reasons for that discharge) are personal to the individual. Ireland fails to see how they could possibly be linked to provisions on incitement to hatred.

16. The absence of a provision to expressly record conscientious objection does not expose personnel to *"…the potential for ridicule and speculation for failing to undertake duties they may otherwise be legally and duty bound to undertake"*[16]. The member would by that point have exercised his or her right to seek discharge. The requirements in question would accordingly no longer apply. Furthermore, respect and dignity at work are central to the Code of Conduct of the Defence Forces.

IV CONCLUSION

17. For the reasons set out above, it is submitted that the Committee should declare this Complaint without merit.

[16] Paragraph 3.2 of the Response of the Complainant, lodged on 11 April 2019