



European
Social
Charter

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

6 September 2021

Case Document No. 3

**European Organisation of Military Associations and Trade Unions (EUROMIL)
v. Portugal**
Complaint No. 199/2021

**RESPONSE FROM EUROMIL
TO THE GOVERNMENT'S OBSERVATIONS
ON ADMISSIBILITY**

Registered at the Secretariat on 30 August 2021



EUROMIL aisbl
(European Organisation of
Military Associations and Trade Unions)
Rond-Point Robert Schuman 6
B-1040 Brussels
Tel: +32.2.626.06.80
E-mail: euromil@euromil.org
N° Ent.: 0538.809.759

**Response to the submission by the Portuguese Government regarding
the admissibility of the complaint
EUROMIL v. Portugal
N°199/2021**

EUROMIL wishes to make the following observations in response to the Portuguese Government's (the Respondent's) submission on the admissibility of the complaint submitted to the European Committee of Social Rights (ECSR) on 25 May 2021, regarding the alleged contravention of Articles 5 and 6 of the Revised European Social Charter (RESC).

The Respondent contests the admissibility of the complaint on the basis that EUROMIL failed to demonstrate that the Respondent did not provide for a satisfactory application of the relevant RESC provisions. Specifically, the Respondent claims that the failure to exhaust all national legal avenues before bringing a complaint to the ECSR renders the complaint inadmissible.

In the first instance, EUROMIL wishes to draw attention to the website of the ECSR where it outlines that "*complaints may be lodged **without domestic remedies having been exhausted and without the claimant organisation necessarily being a victim of the relevant violation.***"¹

This is a clear and unambiguous statement by the ECSR, confirming that as an organisation entitled to register complaints with the ECSR, EUROMIL is not required to exhaust any or all domestic remedies available before submitting a complaint to the Committee. Regarding the admissibility of the complaint, Article 4 of the Additional Protocol merely requires the Complainant to indicate in what respect it considers that the Respondent has not ensured the satisfactory application of the RESC provisions².

Furthermore, it is EUROMIL's contention that the Respondent's reference to the *Interhandel* case, the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights are irrelevant to the admissibility of the complaint and instead move into the merits of the complaint itself. Furthermore, the Committee rejected a similar argument put forward in paragraph 5 of Complaint N° 61/2010³ regarding the admissibility of the complaint and the merits of the case, highlighting the following:

"The Committee considers, contrary to the Government's objection, that the grounds of the complaint are sufficiently well indicated for the latter to be declared admissible. As concerns the accuracy of the complainant

¹ <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure1>

² [Complaint N° 136/2016](#)

³ [Complaint N° 61/2010](#); [Complaint N° 164/2018](#)



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organisation's arguments, the Committee considers that this matter pertains to the merits of the complaint."

Furthermore, in paragraph seven and eight, the Committee observes that as it has already considered the Applicant in Complaint N° 61/2010⁴ as having competence to submit complaints in previous circumstances, as well as noting that the correct procedures were followed when submitting the complaint in case N° 61/2010, it follows that the complaint is admissible. In the current case, EUROMIL has already established its competence to submit complaints to the ECSR⁵ and has in fact followed all correct procedures.

In addition, EUROMIL wishes to highlight the fact that even if exhausting national remedies was a prerequisite to submitting a complaint to the ECSR, it is not foreseen within the relevant provisions governing the conduct of Portuguese military associations⁶. In other words, the Portuguese military associations do not have the authority to initiate such legal proceedings for their members.

Based on the above mentioned reasons, EUROMIL believes that it has met all necessary requirements of the ECSR complaints process and that its submission should be considered admissible by the Committee.

⁴ [Complaint N° 61/2010](#)

⁵ [Complaint N° 112/2014](#)

⁶ https://dre.pt/web/quest/legislacao-consolidada/-/lc/67356360/view?p_p_state=maximized Chapter V