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CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

30 May 2022

**Case Document No. 5**

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

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

**Registered at the Secretariat on 12 May 2022**



European Organisation of  
Military Associations and  
Trade Unions

Brussels, Belgium  
<http://euromil.org/>

## **Response to Portuguese Government's Observations on the Merits: Complaint No. 199/2021 (EUROMIL v Portugal)**

In its response to [EUROMIL's Complaint No. 199/2021](#), the Portuguese government denies that it is in contravention of [Articles 5 and 6 of the Charter](#) on the basis that:

1. the state is in compliance with the international norms and standards;
2. by reason of the fact that the rights to freedom of assembly, association and demonstration are guaranteed in the Constitution and in the relevant military legislation;
3. that the Portuguese state is permitted to restrict these rights in the context of the good functioning of the military and national security;
4. and that 'the rights are effective and freely exercised, and articulation with the competent Government authorities is ensured.'<sup>1</sup>

EUROMIL reasserts that the Portuguese government is not in compliance with international norms and standards and refers to the decision of the European Committee of Social Rights (ECSR) in the case of [EUROMIL v Ireland \(No. 112/2014\)](#), amongst others, as evidence of such. It is EUROMIL's assertion that the Portuguese government's interpretation of the outlined international legal instruments is incorrect as the State has interpreted to allow for what is effectively an outright ban for military personnel on any activities of a trade union nature and any real and meaningful collective bargaining or negotiation mechanisms.

The government asserts that relevant international legal instruments, specifically the [European Convention on Human Rights](#), the [International Labour Conventions](#) and the [International Covenant on Civil and Political Rights](#), allow for national governments to curb the rights of military personnel to the extent that is currently the case in Portugal. In its decision in [EUROMIL v Ireland \(No. 112/2014\)](#), which ultimately upheld EUROMIL's complaint against the State that it was in contravention of Articles 5 and 6 of the Charter, the Committee referred to a decision of the European Court of Human Rights concerning the rights of military personnel in which it found that while States are entitled to a wide margin of appreciation in imposing restrictions upon the rights of military personnel that would not be acceptable for ordinary citizens, such limits cannot "*justify an absolute prohibition to adhere to a professional association founded for the purpose of defending the members' professional and moral interest.*"<sup>2</sup>

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<sup>1</sup> [Page 15, EUROMIL v Portugal \(199/2021\)](#), observations on the merits

<sup>2</sup> [Para 15, EUROMIL v Ireland \(112/2014\)](#), decision on the merits.



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In the same decision, the Committee also refers to the Recommendation of the Committee of Ministers of the Council of Europe as follows:

*"53. No restrictions should be placed on the exercise of the rights to freedom of peaceful assembly and to freedom of association **other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.***

*54. Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, **the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted.***

*55. No disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of lawfully established military associations or trade unions."*  
(emphasis added).

The prohibitions for military associations, as implemented by the government on any activities of a trade union nature, ultimately mean in practice that associations can represent their members in theory rather than in reality and is neither proportionate nor necessary in consideration of the previous decisions of the Committee and the relevant international legal instruments.

Furthermore, the government claims that the 'guarantee' of these rights in the constitution amounts to compliance with international standards. The mere existence of legislation allowing for freedom of assembly, association and demonstration cannot be considered sufficient in the context of the fact that Portuguese military personnel are in effect prohibited from carrying out activities of a trade union nature, including collective bargaining and social dialogue.

The Portuguese government also claims that the rights are effective and freely exercised, and articulation with the competent Government authorities is ensured. As has been said already, Portuguese military personnel are in effect completely prohibited from engaging in activities of a trade union nature and forbidden from bargaining collectively and while the legislation allows for military professionals to be heard, they are not consulted in practice.

This point, as submitted in EUROMIL's initial submission, has not been addressed in the Portuguese government's observations on the merits and rather the



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government claims that 'articulation with the competent government authorities is ensured.' EUROMIL has identified, in conjunction with its Portuguese member associations, evidence to the contrary by virtue of the fact that the Portuguese government fails to engage in any meaningful dialogue or negotiation with the representative associations. In fact, in a hearing with the Minister of National Defence on 26 June 2018, then Secretary of State for Defence, Marcos Perestrello, spoke clearly on the matter commenting that "*the negotiation process with union structures of State bodies and those of the military are of a completely different nature*". Furthermore, he added that "*... we have not yet reached a conclusion and therefore, let's say that the negotiation process, with the different characteristics of a negotiation process within the scope of National Defence, with the associative structures of the military and the negotiation process with the union structures of other State bodies which have, as you know, a completely different nature. I really wonder if we can talk about a negotiation process here*"<sup>3</sup>.

It is therefore EUROMIL's submission that a representative of the Portuguese government freely admitted that the situation in Portugal as it currently is does not allow for any real meaningful negotiation process or collective bargaining mechanisms for the military with state authorities – without which social rights for the military are neither effective nor freely exercised.

It is worth noting here that in its decision in [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy, Complaint No. 140/2016](#), the Committee found that there was a violation of Article 6§2 by the Italian government on the basis that the representative bodies of the Guardia di Finanza were not provided with means to effectively negotiate the terms and conditions of employment, including remuneration. In addition, it also found that the procedure that was provided for in legislation regarding consultations with representative bodies was not shown to ensure effective and meaningful negotiations as opposed to mere hearing, nor did it provide for representatives to meet with ministers on matters relating to working conditions and pay.

In this respect it is similarly worth recalling the Committee's own decision in the complaint EUROMIL v Ireland in paragraphs 47 and 48:

*"Given this context, the Committee considers that Article 5, of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. **However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of***

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<sup>3</sup> [Recording of the meeting from 26 June 2018 in Portuguese Parliament](#) – relevant reference can be heard between 02:59:22 and 02:59:52 in Portuguese. (free translation)



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**professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations**, see *CESP v. France, Complaint No.101/2013, §84, op. cit.*

*Although the right guaranteed in Article 5 is the right of individuals to form and join trade unions, **Article 5 provides that workers must be free to form local, national, or international organisations.** The Committee has consistently held that this implies for the organisations themselves, the right to establish and join federations. **A State Party cannot limit the level at which workers may organize and must allow organisations to affiliate to federations and confederations**" (emphasis added).<sup>4</sup>*

In addition, while EUROMIL absolutely accepts that restrictions are permitted to a certain extent - as is allowed for in national and international legislation - an essentially blanket ban on activities in practice, as is admitted to be the case in Portugal by a government representative himself, is far beyond the proportionate and necessary prohibitions that were envisioned in the Charter. Furthermore, the ECSR has already confirmed that imposing restrictions of the nature that are currently in place in Portugal are not proportionate or necessary.

In its decision in the case of EUROMIL v Ireland Complaint No. 112/2014, the ECSR found that in relation to Article 6 of the Charter:

*"Nothing in the wording of Article 6 of the Charter entitles States Parties to enact restrictions on the right to bargain collectively on part of the armed forces in particular. Article 6§2 of the Charter obliges the States parties to promote (...) machinery for voluntary negotiations on, inter alia, the regulation of terms and conditions of employment."<sup>5</sup>*

Furthermore, the Committee found that

*"it is imperative to regularly consult all parties throughout the process of setting terms and conditions of employment and **thereby provide for a possibility to influence the outcome. Especially in a situation where the trade union rights have been restricted, it must maintain its ability to argue on behalf of its members through at least one effective mechanism.** Moreover, in order to satisfy this requirement, the mechanism of collective bargaining must be such as **to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side.**" (Emphasis added).<sup>6</sup>*

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<sup>4</sup> [EUROMIL v Ireland \(112/2014\)](#), decision on the merits

<sup>5</sup> [Para 85, EUROMIL v Ireland \(112/2014\)](#), decision on the merits.

<sup>6</sup> [Para 87, EUROMIL v Ireland \(112/2014\)](#), decision on the merits.



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In its observation on the merits of the complaint, the Portuguese government has not given any examples of effective mechanisms that are in place for professional military associations to engage in any effective social bargaining and so fails to rebuke EUROMIL's allegations. Instead, the respondent has only highlighted the existence of legislation allowing for the establishment of such associations – the bare minimum in what is expected as a signatory to the Charter.

For the abovementioned reasons, EUROMIL wishes to reinstate its initial submission that the Portuguese government has de facto failed to implement Articles 5 and 6 of the Charter regarding the rights of the Portuguese military not granting them trade union rights and therefore not being able to collectively bargain and engage in appropriate and effective bargaining mechanisms between the Minister of Defence as the employer, and the military associations.