

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

16 September 2022

**Case Document No. 1**

**European Organisation of Military Associations and Trade Unions (EUROMIL)  
v. Ireland**  
Complaint No. 212/2022

**COMPLAINT**

**Registered at the Secretariat on 9 August 2022**



European Organisation of  
Military Associations and  
Trade Unions

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

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

Brussels, 3 August 2022

## **EUROMIL against Ireland**

### **Complaint**

The collective complaint launched by the European Organisation of Military Associations and Trade Unions ("EUROMIL") against Ireland deals with the failure to provide adequate compensation for certain members of the Irish Defence Forces employed on public holidays and for the inability of members represented by Defence Forces representative associations to attain overtime payments for additional hours worked.

### **Summary & Aim of the Collective Complaint**

EUROMIL launches a collective complaint against Ireland to ensure just conditions of work and to seek pay in accordance with public holidays and ensure the effective exercise of the right to a fair remuneration, and the right of workers to an increased rate of remuneration for overtime work.

The aim of this complaint is to achieve adequate compensation for members of the defence forces who work on public holidays and to secure overtime payments for additional hours worked.

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

Articles violated are articles 2§1, 2§2, 4§1 and 4§2 of the Revised European Social Charter (ESC).



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## Article 2 – **The right to just conditions of work**

*With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:*

*1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;*

*2 to provide for public holidays with pay;*

## Article 4 – **The right to a fair remuneration**

*With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:*

*1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;*

*2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;*

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



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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 personnel to form and join trade unions and independent associations and for their inclusion in a regular social dialogue by the authorities.

## **Background Ireland**

The Defence Forces were established by proclamation of the Executive Council of the Irish Free State on 1 October 1924. Section 17 of the Defence Act, 1954 provides that, under the direction of the President, the military command of, and all executive and administrative powers in relation to, the Defence Forces shall be exercisable by the Government through and by the Minister for Defence. The Defence Forces consist of the Permanent Defence Force and the Reserve Defence Force.

The present establishment of the Permanent Defence Force, which comprises the Army, Naval Service and Air Corps is 9500, with an effective strength of less than 8300 due to recruitment and retention difficulties.<sup>1</sup>

### *Remuneration – Current Position*

The pay of the Defence Forces has traditionally been adjusted in line with the pay movements of other public servants, principally civil service grades. Special reviews have until now been conducted by review groups usually comprised of civil servants. A number of reviews have taken place regarding the pay of members of the Defence Forces with the last being the [Report of the Commission on the Defence Forces](#) in February 2022, although this report was confined to reviewing pay structures, as opposed to pay rates. Prior to the foregoing report, the Report of the Public Service Pay Commission was published in July 2019.

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<sup>1</sup> Dáil Éireann Debate, 14 June 2022 – accessed at [https://www.oireachtas.ie/en/debates/question/2022-06-14/906/?highlight%5B0%5D=defence&highlight%5B1%5D=strength&highlight%5B2%5D=defence&highlight%5B3%5D=forces#pq-answers-906\\_907\\_910\\_911](https://www.oireachtas.ie/en/debates/question/2022-06-14/906/?highlight%5B0%5D=defence&highlight%5B1%5D=strength&highlight%5B2%5D=defence&highlight%5B3%5D=forces#pq-answers-906_907_910_911)



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As acknowledged in the recent report of the Commission on the Defence Forces, Ireland has a centralised pay negotiation model with discussions taking place between the Department of Public Expenditure and Reform and the Public Services Committee of the Irish Congress of Trade Unions<sup>2</sup>.

While a Scheme for Conciliation and Arbitration exists for members of the Defence Forces, this body is obliged to act in accordance with wider public sector pay policy and has a number of limitations imposed upon its scope. The most pressing of these restrictions is the generalised prohibition on the initiation of claims by the representative associations relating to overtime payments<sup>3</sup>.

EUROMIL, on behalf of PDFORRA, has already submitted a complaint against Ireland related to the breach of Articles 5 and 6.2 as they relate to the inability of PDFORRA to influence public sector pay policy and to engage in collective bargaining and social dialogue. Findings in favour of EUROMIL were recorded in 2018. In 2022, the Minister for Defence accepted a recommendation of the Commission on the Defence Forces that Defence Forces representative associations should be permitted to obtain associate membership status with the Irish Congress of Trade Unions. Both associations, PDFORRA and RACO, have subsequently associated with ICTU and are now members of the Public Service Committee of Congress.

Following the submission of EUROMIL's complaint in 2014, and the subsequent positive ruling in 2018 by the Committee, PDFORRA sought to highlight the inequity of this generalised prohibition on the discussion of overtime within the Conciliation and Arbitration Scheme in correspondence to the Department on 10 March 2018. This correspondence was directed to a review being undertaken by an Independent Chairman appointed by the Minister for Defence of its Conciliation and Arbitration Scheme; however, the Department responded negatively to PDFORRA's proposed change to this provision.

Subsequently, PDFORRA highlighted the disparity of treatment of members of the Defence Forces as compared to other workers in submissions to the Public Service

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<sup>2</sup> Commission on the Defence Forces, Dublin, Feb 2022, page 124

<sup>3</sup> Paragraph 21 of the Scheme for Conciliation and Arbitration for members of the Defence Forces, Revised 2019.



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Pay Commission in 2018 and the Commission on the Defence Forces in 2021. Equally, RACO has also highlighted the prohibition of the payment of overtime to Defence Forces personnel in its submissions to the Public Service Pay Commission and the Commission on the Defence Forces, which has been grounded in the failure to adequately record the working time of PDF personnel. However, regrettably, neither of these bodies addressed the matter in a substantive way, although the Commission on the Defence Forces did remark on unpaid work being undertaken by members of the Defence Forces. In its comments, the Commission stated that it is imperative to remove the 'free labour' aspect of military life. As such, Defence Forces commanders and personnel with responsibility for assigning duties need to be held accountable for the working hours of staff. Connected to this, the Commission also notes the requirement to develop and implement a system for recording time and attendance, to ensure compliance with the provisions of the Directive and, while cognisant of the complexity and challenges involved in doing so across such a disparate organisation, believes that measures to introduce such a system should be implemented without delay. As part of its deliberations, the Commission noted the absence of reliable data in relation to hours actually worked by Defence Forces personnel. This is an essential tool for both management and representative associations. Furthermore, the Commission on the Defence Forces noted that a number of European armed forces have compensatory mechanisms that are compatible with military service in Ireland and in line with public sector pay policy. It is the strong assertion of EUROMIL that the payment of overtime is included in these compensatory mechanisms. Finally, the Commission stated that appropriate methods for addressing hours worked in excess of expected norms are best negotiated between management and the representative associations. However, the employer has declined to enter into negotiations with either PDFORRA or RACO on these methods of employee remuneration and compensation for hours worked in excess of expected norms.

Furthermore, it is worth noting that the ECSR [published a follow up report](#) on the 2014 decision in 2021, noting the failure of the Irish government to abolish prohibitions on military associations from joining national trade union confederations and to move in line with Article 5 of the Charter. While conditional membership has now been allowed for, it remains to be seen whether in reality this will solve the pre-existing problems.



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Although correspondence between officials from the Department of Defence confirms that PDFORRA and RACO members are paid on a 5/7 basis<sup>4</sup>, the associations are debarred from submitting claims for overtime payments where members undertake duties outside of normal working hours.

Moreover, the Department of Defence has confirmed in correspondence on 23 November 2000 that it has chosen a reference period of one week for the calculation of pay for enlisted personnel.<sup>5</sup>

### *Examples*

For the avoidance of doubt, the Defence Forces, generally, provide paid time off in lieu where personnel work on public holidays. However, in certain circumstances, members receive no additional premium or time off for working during public holidays and conditions do not apply to all members equally due to the varying nature of the work carried out. Examples of such circumstances are:

- Personnel who are at sea during a public holiday;
- Personnel employed to work in Portlaoise Prison as security;
- A recent instance where personnel were not granted time off in lieu on the nearest working day after a public holiday on a weekend, as is common place in the wider public service in Ireland; and
- Personnel in the Army Ranger Wing (ARW) working on public holidays or hours outside of duty.

### Portlaoise Prison Security

Currently, members who undertake duty in Portlaoise Prison commence work for 72 hours at a time. This period of duty is followed by a period of 72 hours rest. During the period they are on duty they are paid their daily rate of pay and receive a flat rated allowance, which is less than the equivalent daily rate of pay. Upon the expiry of the total tour of duty (which is 72 hours) they receive one day off

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<sup>4</sup> Correspondence exchanged between Mr Ciaran Murphy and the General Secretaries of both Representative Associations (PDFORRA representing Enlisted personnel and RACO representing Officers) on the 30<sup>th</sup> May 2013, confirmed that members pay has been calculated on a 5/7 basis since 2011. Annual Leave is calculated on a 7/7 basis due to liabilities associated with military service.

<sup>5</sup> Correspondence dated the 23<sup>rd</sup> November 2000, between Andrea Heron C&A Branch DoD and Mr Gerry Rooney, General Secretary PDFORRA.



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per tour of duty. This time off is unrelated to any period where a public holiday occurs. This is an ad hoc arrangement and has never been codified. Normally, personnel work 4/7 with three days' rest, regardless of any public holiday that may fall within the shift pattern.

### Naval Service

Furthermore, members of the Naval Service have working conditions that can give rise to clear violations of the Revised Social Charter. Naval Service personnel can be required to work on a 7/7 basis: they receive a basic rate of pay and a flat rated allowance corresponding to each day spent at sea, bearing no correlation to the National Minimum Wage rate on an hourly basis<sup>6</sup>. No cognizance is taken of pay arrangements referencing the 5/7 pay regime, which in effect results in personnel only being paid an allowance for two of the days with no basic pay. Moreover, when personnel work public holidays/weekends no increased allowance is paid - the premium is flat rated and no additional time off in lieu in recognition of the public holiday is provided.

### Army Ranger Wing

Additionally, it should be noted that members of Ireland's Special Forces, the Army Ranger Wing (ARW) receive no additional premium for working public holidays or hours outside of normal duty hours.

It is EUROMIL's assertion that payments made to members of the ARW who work extra hours are not adequately compensated by overtime as they receive a flat rate payment for membership of this unit. Additionally, a recent claim through the Conciliation and Arbitration Scheme to discuss this issue was rejected without response by the Department of Defence. A large proportion of an independent adjudication award for members of this unit went unpaid between 2010, when the award was made, and October 2018, when only an increased payment was made, without a retrospective payment which should have extended retrospectively to 2006.

### Ordnance Corps Personnel

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<sup>6</sup> National Minimum Wage Act 2000 – current rate €10.50 per hour  
<https://www.irishstatutebook.ie/eli/2000/act/5/enacted/en/html>



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Members of the Ordnance Corps including Explosive Ordnance Disposal (EOD) officers also have working conditions that can give rise to clear breaches of the provisions of Article 4.2 (as well as the Working Time Directive), where they can be required to work 7/7, with a basic rate of pay and an allowance which is paid for each day on EOD duty - this allowance is flat rated and bears no correlation to the National Minimum Wage rate on an hourly basis.

### Relevant international material

Fair and just working conditions and the right to appropriate remuneration are foreseen in Article 7 of the [International Covenant on Economic, Social and Cultural Rights](#), Article 31 of the [Charter of Fundamental Rights of the European Union](#), [Convention 117](#), [Part IV of the ILO](#) and [Directive 2003/88EC \(Working Time Directive\)](#).

Regarding the application and implementation of the Working Time Directive, the Court of Justice of the European Union has already decided in the case [C-742/19 Ministrstvo za obrambo](#) that

*"[...] the principal tasks of the armed forces of the Member States, which are the preservation of territorial integrity and safeguarding national security, are expressly included among the essential functions of the State which the European Union must respect. However, it points out that it **does not follow from the above that decisions taken by the Member States on the organisation of their armed forces fall entirely outside the scope of EU law, in particular where the harmonised rules at issue relate to the organisation of working time.**"* (Emphasis added)

This case is a clear decision on behalf of the Court that Member States cannot derogate from the fundamental rights and freedoms of military personnel, by virtue of the fact that they are merely members of the national armed forces and includes aspects such as recording of working time as well as proper remuneration and compensation for overtime and public holidays.

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<sup>7</sup> [Press release](#)



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Furthermore, it is worth drawing attention to the previous decision of the European Committee of Social Rights in the [Complaint 111/2014, GSEE v Greece](#), that

*"159. The Committee considers that the **legal framework does not clearly define the scope left to collective and individual negotiations and consequently does not offer sufficient guarantees for compliance with Article 2§1.***

*160. The Committee accordingly holds that the situation of employees with respect to working time is in violation of Article 2§1 of the 1961 Charter **on account of the excessive length of weekly work authorized and the lack of sufficient collective bargaining guarantees.**"<sup>8</sup> (Emphasis added)*

and

*"The Committee notes that the above finding is supported by data from the Organization for Economic Co-operation and Development (OECD) which highlight the **unsuitability of anti-crisis measures which target only the intensification of work without concern for the multitude of other factors that determine labour productivity (training of workers, respect for private and family life, the psychological health of the persons concerned, wage rewards, etc.),** which according to this source remains very low." (Emphasis added)*

In addition, in [Complaint 68/2011, CESP v France](#), the Committee found that in relation to Article 4 of the Charter

*85. The Committee considers that as the arrangements for compensatory time off provide that senior police officers working overtime when performing certain duties may only claim equal or equivalent rest periods calculated on an hour for hour basis, they are not in conformity with Article 4§2 of the Charter.*

*86. In this connection, the Committee would point out that:*

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<sup>8</sup> [GSEE v Greece](#)



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- "not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate" (Conclusions I, statement of interpretation of Article 4§2, p. 28);

- **"the aim of Article 4 § 2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration.** However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, ... **Article 4 § 2 requires that this time be longer than the additional hours worked"** (Conclusions XIV-2, Belgium, p.134);

- "... the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage. The Committee allows additional time off to replace increased remuneration..." (Conclusions XIV-2, statement of interpretation of Article 4§2, p. 35).

## **Arguments**

EUROMIL maintains that members of the Irish Defence Forces are not treated in conformity with Article 2§1, 2§2, 4§1 and 4§2 of the Revised Charter, in all instances, taking into consideration the following matters:

- Members of the Defence Forces do not fall into an exempted category of worker<sup>9</sup> and should be entitled to overtime payments or a premium payments regime that is appropriate and negotiated<sup>10</sup>;

<sup>9</sup> Digest on decisions, Page 67 - "Exceptions to a higher rate of overtime pay for all police members irrespective of their rank and their responsibilities, 417 or for all state employees or public officials, irrespective of their level of responsibility does not conform with Article 4§2."

<sup>10</sup> The Commission on the Defence Forces, established by Government that reported in February 2022 remarked at p111 "Working hours exceeding the expected norm should receive adequate compensation and also be managed appropriately at an organisational, service and unit level. The rostering of staff for additional hours should be done in an



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- The Irish Government fails to provide adequate remuneration, via overtime payments or time in lieu, to personnel undertaking duties for a duration of 24 hours and greater and personnel do not receive a premium for working overtime hours even where time off in lieu and premium payments are included;
- The current levels of payments do not meet levels necessary to constitute a premium payment for working on public holidays, where additional days and premium payments are not made;
- The Irish Government fails to recognise the right of workers to an increased remuneration for overtime work and does not engage in adequate discussions on the provision of overtime through the Conciliation and Arbitration Scheme;
- The Irish Government fails to record the working hours of personnel in an agreed manner with the representative associations thus preventing the adequate compensation for overtime work. Specifically, the current remuneration arrangements for members of the Irish Naval Service and Ordnance Corps make it particularly difficult to calculate the overall rates of pay and current arrangements in no way compensate for overtime/hours worked<sup>11</sup>;

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*effective and efficient manner and should not be on an indiscriminate basis. While remuneration in lieu of exceeding maximum working hours, or in lieu of compensatory rest, is not an option and would be inconsistent with the provisions of the Directive, its implementation should also be carried out in a way that disincentivises use of 'free labour' i.e. the ability of management to roster personnel for additional working hours without cost."*

<sup>11</sup> This fact was remarked upon by an independently established Commission on the Defence Forces, (Feb 2022) Page 122, where it was remarked- *"The Commission recommends that immediate access to the Sea-going Service Commitment Scheme is provided to direct entry personnel in the Navy. In addition, overall arrangements for sea-going allowances should be reviewed and reformed. The current arrangements include a Sea-going Naval Personnel Tax Credit, a Sea-going Service Commitment Scheme and separate Patrol Duty and Naval Pay allowances. The Commission believes that these structures are overly complex and do not adequately incentivise and reward the hazardous nature and associated restrictions of serving at sea for prolonged periods."*



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## **Conclusion**

EUROMIL requests that the Committee finds that:

- Ireland is in breach of Articles 2§1, 2§2, 4§1 and 4§2 in recognition of the failure to appropriately remunerate personnel, as effectively recognised by the Government's own report from Commission on the Defence Forces in February 2022;
- the Irish Government is in breach of Article 2§1 by its failure to conclude a collective agreement as it pertains to working hours as it endangers the health and safety of members of the Irish Defence Forces;
- Irish Armed Forces are no less entitled to the protections afforded to other workers as it relates to the fairness of pay rates and protections than other public servants;
- the failure to conclude collective agreements as they relate to public holidays or working overtime is a breach of Article 2§2 and 4§2; and
- the ban on discussing overtime as part of the Scheme for Conciliation and Arbitration is unreasonable, disproportionate and unnecessary to the aim to be achieved when compared to the scope given to all other public servants and members of the security services in.

Emmanuel JACOB

President

Jörg GREIFFENDORF

Vice-President