



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

20 March 2023

Case Document No.3

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

**SUBMISSIONS BY THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 15 March 2023

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

EUROPEAN ORGANISATION OF MILITARY ASSOCIATIONS AND TRADE UNIONS (EUROMIL)

**v
IRELAND**

Complaint no. 212/2022

WRITTEN SUBMISSIONS OF THE GOVERNMENT OF IRELAND

15 March 2023

A. Introduction and summary

1. This collective complaint (the “Complaint”) alleges non-conformity with Articles 2 (the right to just conditions of work) and 4 (right to a fair remuneration) of the Revised European Social Charter (the “Charter”). It has been alleged that Ireland is in violation of Articles 2§1, 2§2, 4§1 and 4§2 of the Charter by reason of members of the Irish Defence Forces being denied the benefit of appropriate working conditions and remuneration, particularly when they work on public holidays or when they work overtime.
2. The Government of Ireland (the “Respondent”) refutes the assertions made by the Complainant in their entirety. The Complaint contains certain factual assertions which are inaccurate and omits to set out the context of remuneration and conditions of service in the Irish Defence Forces. The Respondent’s observations with respect to the merits of the Complaint, set out more fully below, may be summarised as follows.
3. First, it is submitted that there has been no breach of Article 2§1 of the Charter. The Defence Forces have typical working hours of 40 hours per week. Working hours vary considerably depending on unit, location, appointment held and type of duty.¹ Retaining flexibility for particular duties to be carried out beyond this where required to achieve the objectives of public safety and national security, with the safeguards of oversight of military management and a complaint mechanism, is proportionate to the legitimate objectives sought to be achieved in accordance with Article G of the Charter.
4. Secondly, the Respondent denies that there has been a breach of Article 2§2 of the Charter. The Defence Force Regulations A11 prescribe Defence Force public holidays. When required to work on a public holiday, a member of the Permanent Defence Force (the “PDF”) will be paid their basic wage, plus military service allowance (“MSA”), plus any allowance payable at a higher rate than normal. In addition, they will be entitled to compensatory time off. Cumulatively, this amounts to adequate compensation. In the alternative, the criteria of Article G are met.
5. Thirdly, the Respondent submits that there has been no breach of Article 4§1 of the Charter. The starting salary for a new recruit is more than 60% of the national average weekly earnings. While the salary for apprentices is less than 60% of the national average weekly earnings, it is submitted that the criteria of Article G are met in this respect.
6. Fourthly, it is denied that there has been a breach of Article 4§2 of the Charter. Beyond the typical working week of 40 hours, members of the Defence Forces are called upon

¹ The position with respect to working hours within the Defence Forces remains as outlined in the Report of the Commission on Remuneration and Conditions of Service in the Defence Forces (1990) at paragraph 2.4.2 said “There are no specific standard working hours for the Defence Forces. Insofar as typical working hours can be said to exist, they are 08.30 hours to 16.30 hours, Monday to Friday, with a lunch break of 1.5 hours, and from 08.30 hours to 12.30 hours on Saturday, though most units are manned by skeleton staff on Saturday mornings”.

to carry out other duties for which various allowances are payable. The rates of pay for various allowances vary in accordance with the level of seniority of the member and so are linked to the level of basic wage. Any allowance payable would be in addition to both basic pay and MSA. Payment for such duties would amount to more than a 10% increase to the basic rate of pay. In the alternative, it is submitted that the criteria of Article G are met.

B. Relevant domestic law and practice

Legislative and regulatory framework

7. Directive 2003/88/EC concerning certain aspects of the organisation of working time, provides at Article 1(3) that “this Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14, 17, 18 and 19 of this Directive.” Article 17(3) of that Directive provides that “in accordance with paragraph 2 of this Article derogations may be made from Articles 3, 4, 5, 8 and 16: ... (b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms; (c) in the case of activities involving the need for continuity of service or production [...]”.
8. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work provides, at Article 2, as follows:
 - (1) This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).
 - (2) This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.
9. In Case C-742/19 *BK v Republika Slovenija (Ministrstvo za obrambo)*,² the Court of Justice of the EU (the “CJEU”) set out guidance on what types of security duties would be excluded from the scope of Directive 2003/88/EC:

88. It follows from all the considerations above that Article 1(3) of Directive 2003/88, read in the light of Article 4(2) TEU, must be interpreted as meaning that a security activity performed by a member of military personnel is excluded from the scope of that directive:

– where that activity takes place in the course of initial or operational training or an actual military operation; or

² OJ C 19, 20.1.2020.

- where it is an activity which is so particular that it is not suitable for a staff rotation system which would ensure compliance with the requirements of that directive; or
- where it appears, in the light of all the relevant circumstances, that that activity is carried out in the context of exceptional events, the gravity and scale of which require the adoption of measures indispensable for the protection of the life, health and safety of the community at large, measures whose proper implementation would be jeopardised if all the rules laid down in that directive had to be observed; or
- where the application of that directive to such an activity, by requiring the authorities concerned to set up a rotation system or a system for planning working time, would inevitably be detrimental to the proper performance of actual military operations.

10. Directive 93/104/EC (now repealed) and its successor, Directive 2003/88/EC are implemented in domestic law by the Organisation of Working Time Act 1997 (as amended) (the “1997 Act”). The 1997 Act provides, at section 3(1), that “subject to subsection (4), this Act shall not apply to a member of the Garda Síochána [the Irish Police Service] or the Defence Forces”. Subsection (4) sets out a power of the Minister for Enterprise, Trade and Employment to, “after consultation with any other Minister of the Government who, in the opinion of the Minister, might be concerned with the matter, by order provide that a specified provision or provisions of this Act or, as the case may be, of Part II shall apply to a specified class or classes of person referred to in subsection (1) or (2) and for so long as such an order remains in force the said provision or provisions shall be construed and have effect in accordance with the order”.

11. Section 97(1) of the Defence Act 1954 provides that the Minister for Defence may make regulations in relation to the following matters—

- (a) the rates and scales of pay, allowances and gratuities of members of the Defence Forces,
- (b) the grants which may be made to members and units of the Defence Forces,
- (c) the conditions applicable to the issue of such pay, allowances, gratuities and grants.

12. Pursuant to this power, the Minister for Defence adopted the Defence Force Regulations A11 (the “Regulations”), which set out provisions regarding entitlements of members of the PDF to leave and Defence Force holidays. At regulation 41, the Regulations provide as follows:

41. Defence Forces holidays.

(1) The following days shall be observed as Defence Force holidays:

1st January.

17th March.

11th July.

First Monday in August.

Good Friday.	15th August.
Easter Monday.	Last Monday in October.
First Monday in May.	25th December.
1916 Commemoration Day.	26th December.
First Monday in June.	

Such other days as the Minister may specially authorise.

(2) When either the 25th or 26th December falls on a Sunday, the 27th December shall be observed a Defence Force holiday. Where any of the other holidays prescribed in subparagraph (1) falls on a Sunday, the day immediately following shall be observed as a Defence Force holiday.

(3) On Defence Force holidays, Defence Force members shall, as far as possible, be relieved of all normal routine duties. They may, however, be required to attend such ceremonial and/or special parades as may be ordered. Where, owing to the exigencies of the service, a member is required to carry out normal duties or a ceremonial or special parade on a Defence Force holiday, such member shall be relieved of all normal duties on any day within 1 month after the Defence Force holidays concerned.

13. A new public holiday in February has been granted and the Regulations will be amended accordingly.
14. In addition, members of the Defence Forces have received additional days at Christmas and Easter by Ministerial direction, which are not commonplace across the wider public service.

Developments in the Irish Defence Force in respect of remuneration

15. The remuneration and conditions of service of the Defence Forces were the subject of review by the Commission on Remuneration and Conditions of Service in the Defence Forces (the "Gleeson Commission"). The Gleeson Commission was established on 27 July 1989 and published its Report on 31 July 1990 (enclosed at **Annex 7**).
16. The Gleeson Commission was the first independent commission in the history of the State set up to examine pay and conditions within the Defence Forces (paragraph 1.1.8 of the Report).
17. The Complainant quotes from paragraph 1.1.4 of the Gleeson Report as follows: "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 heretofore been conducted by review groups usually comprised of civil servants". That quote pertains to the position at that time, prior to the implementation of the recommendations arising from the Report.

18. Since the Report of the Gleeson Commission in 1990, members of the Defence Forces have received increases in pay and allowances in line with increases awarded under the terms of public service collective agreements. In 2000, a Public Service Benchmarking Body was established under the terms of the Agreement in place at that time, i.e. The Programme for Prosperity and Fairness. The Body considered a range of factors for the purposes of comparing work and reward, including security of tenure, pension arrangements, annual leave, allowances, working hours and non-pay benefits. In a report in 2002, the Body made a broad range of recommendations in relation to pay and allowances across the public sector, including the Defence Forces.
19. While the Defence Forces have received general round pay increases in line with other public servants, they have also been the beneficiaries of additional remuneration outside of these agreements including a 10% increase in the MSA (an allowance specific to members of the Defence Forces) arising from a recommendation in the Report of the Public Service Pay Commission on recruitment and retention in the Permanent Defence Forces (May 2019) (enclosed at **Annex 8**).
20. A Commission on the Defence Forces (the "Commission") was established by the Irish Government in December 2020, to undertake a comprehensive review of the Defence Forces. The Report of the Commission on the Defence Forces, published in February 2022, sets out recommendations relating to the Defence Force structures, defence capabilities, organisation, culture, human resources and funding (enclosed at **Annex 9**).
21. The Commission reported that while it did not have a brief to look at rates of pay and allowances, it observed at Chapter 8.4.2, that "much of the commentary surrounding issues of pay in the Defence Forces does seem not to fully reflect the totality of the remuneration package, particularly so in the context of various allowances that are payable. The Commission believes that a more complete portrayal of the total package of attractive benefits to joining the Defence Forces needs to be better communicated".
22. The Complainant sets out a section of this 2022 report from p. 111: "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 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 disincentives use of 'free labour' i.e. the ability of management to roster personnel for additional working hours without cost." This report continued to state:

The Commission notes 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. Appropriate methods for

addressing hours worked in excess of expected norms are best negotiated between management and the representative associations.

In other parts of the economy, up to a certain grade or position of management authority, any additional labour sought should be delivered within a particular budget. As such, the personal time of employees is recognised, and is protected, by the existence of a cost factor. The Commission recommends the introduction of a (non-financial) 'labour hours budget' for managers would ensure that the time of Defence Forces personnel is managed appropriately and efficiently by Government, by service commanders, and by those assigning duties at a local level.

[at p.111]

23. In this way, the Commission recognised that an overtime mechanism would not be appropriate for many aspects of the duties of the Defence Forces and an alternative mechanism would be best negotiated between management and the representative associations. It recommended the introduction of a (non-financial) 'labour hours budget' to ensure that the personal time of members of the PDF is recognised. The Irish Government has accepted this recommendation for implementation.³

Dispute resolution in the Irish Defence Forces

24. The Defence (Amendment) Act 1990 and Defence Force Regulations S6, provided for the establishment of representative associations for members of the Permanent Defence Force. The associations that have since been established are the Representative Association of Commissioned Officers ("RACO") and the Permanent Defence Forces Representative Association ("PDFORRA") (for enlisted personnel).
25. A Conciliation and Arbitration ("C&A") scheme for members of the Permanent Defence Force ("PDF") provides a formal mechanism for the determination of claims and proposals from the Permanent Defence Force representative associations relating to remuneration and conditions of service. The scheme (enclosed **at Annex 10**) operates on the basis of a signed Agreement between the Official/Management side (comprising the Department of Defence, Defence Forces and the Department of Public Expenditure and Reform) and the staff side (that is RACO and PDFORRA).
26. The C&A scheme, since its inception in the early 1990s, has provided the framework to progress many successful negotiated agreements between Defence management and the PDF representative associations. These agreements have provided for improved rates of pay and allowances and terms and conditions of employment for members of the PDF. An independent review of the scheme was completed in 2020. The representative associations contributed to the review. The scheme is operating under a revised agreement which was signed by the parties in January 2020,

³ Department of Defence and Defence Forces, "Building for the Future – Change from Within", high level action plan for the report of the commission on the defence forces, 2022, p. 24.

[file:///C:/Users/Owner/Downloads/229799_41a14126-c212-46ac-960a-608b057ad8d5.pdf]

incorporating the recommendations in the review. A further review of the Scheme is planned for 2023, as per the recommendation in the previous review.

27. This scheme provides at paragraph 23, 'subjects for discussion', that "while due to the nature of military service, claims for overtime payments may not be entertained, claims for specific allowances for any type of duty, including those duties which of their nature involve long hours, may be submitted under this heading".

Implementation of EU Directive

28. The Complainant relies on Directive 2003/88/EC (the Working Time Directive of the EU) and case law of the Court of Justice of the European Union ("CJEU"). The Respondent submits that insofar as the Complaint relates to the question of whether Irish domestic law and practice is in compliance with EU law, this falls outside the scope of the Charter *ratione materiae* and accordingly outside the remit of the Committee. As the Committee has expressly stated "it is neither competent to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the European Social Charter".⁴ To provide the Committee with some background, however, the Respondent will address this Directive.
29. Members of the Defence Forces are currently excluded from the mechanisms of the Organisation of Working Time Act 1997, which transposed the EU Working Time Directive 2003/88/EC into Irish Law. The Irish Government is committed to amending this Act in order to bring the Defence Forces within the scope of its provisions, where appropriate. However, the C&A scheme makes clear that the operation of the Organisation of Working Time Act 1997 and enabling legislation comes within its scope.
30. Directive 2003/88/EC recognises the specific nature of certain military activities that require a permanent presence in order to maintain public security.⁵ Civil and military management have undertaken significant work in examining the nature of the duties of the Defence Forces to determine how the Working Time Directive can be applied to its members. These deliberations are informed by the interpretation of recent case law of the CJEU on military service, by the fundamental requirement to ensure that rights are afforded to serving members and also by the need to ensure that the Defence Forces can continue to fulfil its essential state functions. In Case C-742/19 *BK v Republika Slovenija (Ministrstvo za obrambo)* (cited above) the CJEU made clear that the rules of the Working Time Directive "cannot be interpreted in such a way as to prevent the armed forces from fulfilling their tasks and, consequently, so as adversely to affect the essential functions of the State, namely the preservation of its territorial integrity and the safeguarding of national security".⁶

⁴ *CGT v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, para. 33.

⁵ Article 17(3) of Directive 2003/88/EC.

⁶ Para. 43.

31. It is necessary to ensure that all work arrangements meet all of the provisions of the Directive, including arrangements to manage changes in work practices. A high percentage of the normal everyday work of the Defence Forces is already in compliance with Directive 2003/88/EC. However, some activities may qualify for an exemption or a derogation due to their specific nature.
32. A Sub-Committee has been established under the C&A Scheme for members of the PDF for the purposes of a consultation process with the Representative Associations, on the implementation of the Working Time Directive. Discussions are commenced and are continuing. The application of working time provisions to the Irish Defence Forces will involve changes in practices and procedures. The ongoing discussions between the representative associations are considering matters raised in the complaint including activities at sea, Portlaoise Prison and the Army Ranger Wing. There are also discussions on methodologies for recording time and attendance. Following these discussions, a final management position will be submitted to the Minister for Defence for his consideration and approval.
33. A robust time and attendance system is an essential element in ensuring that the provisions of the Working Time Directive are properly afforded to serving members of the Defence Forces. As an interim measure, and fully acknowledging the importance of a time and attendance system in the implementation of the Working Time Directive, officials in the Department of Defence are engaging with military management on the possibility of applying an interim enhanced time recording measure, without prejudice to the outcome of the ongoing process, in preparing for the implementation of the Working Time Directive within the Defence Forces.

C. The law

I. Alleged violation of Article 2§1 of the Charter

34. The Complainant claims that there has been a violation of Article 2§1 of the Charter, which provides that with a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake 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.
35. Working hours in the Defence Forces vary considerably depending on unit, location, appointment held and type of duty. There are no specific standard working hours for the Defence Forces. Typical working hours would be 08.30 hours to 16.30 hours, Monday to Friday, with a lunch break of 1.5 hours, and from 08.30 hours to 12.30 hours on Saturday, though most units are manned by skeleton staff on Saturday mornings. Allowances such as Security Duty are processed by recording the duty on the Personnel Management System (PMS), approved by military management and then uploaded into payroll.
36. The Report of the Gleeson Commission regarded that overtime would be totally inappropriate in the Irish Defence Forces (para. 2.4.6). A similar point was made by

the then General Secretary of the Representative Association of Commissioned Officers to a Committee of the Irish Parliament in 2012, where he said: “Internationally, it is common that pay structures are complex. Some armies pay overtime but the experience is that when one is on exercise with such armies, the exercise stops at a certain time. That is not a situation we would like to see in Ireland”.⁷

37. The Conciliation and Arbitration Scheme for members of the Permanent Defence Force, January 2020, provides a mechanism for representatives of these members to raise any issues they have in the following notable areas:

23(1) ...B. Other Conditions of Service and Career Development under the following headings:

n) the application of the Safety, Health and Welfare at Work Act, 2005 as amended;

o) matters relating to the operation of the Organisation of Working Time Act 1997 and enabling legislation;

...

x) suggestions, within the scope of representation, for promoting efficiency and effectiveness in the Defence Force in a spirit of partnership.

38. In *EUROMIL v Ireland*⁸ the Committee found that the prohibition of the right to strike of members of the armed forces did not amount to a violation of Article 6§4 of the Charter. In considering Article G of the Charter, the Committee had regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operated under a system of military discipline and the potential that any industrial action could disrupt operations in a way that threatened national security. This limitation on their rights was established by law and pursued the legitimate objectives of maintaining public safety and national security and the rights of freedoms of others by ensuring that the armed forces remained fully operational and available to respond at all times.

39. In *CGIL v. Italy*⁹ the respondent Government invoked Article G in respect of members of the police force. The Committee accepted that the prior authorisation of the Minister of Defence for the establishment of a trade union represented an assessment of the legitimacy and compatibility of professional associations of military personnel with the democratic principles as well as with the principles of impartiality, neutrality and effectiveness in order to ensure the protection of the fundamental interests of all citizens. So, this restriction was justified for a legitimate objective. However, the Committee further found that the measures in question were not proportionate. The measures were excessive because the establishment of trade unions by members of the police force was subject to the prior consent of the Minister of Defence and because of the complete prohibition on such members joining other trade unions.

⁷ https://www.oireachtas.ie/en/debates/debate/committee_of_public_accounts/2012-10-18/4/.

⁸ *EUROMIL v Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, paras. 115-118.

⁹ *CGIL v Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, paras. 83, 93.

40. In *EuroCOP v Ireland*¹⁰ the Committee found that the exclusion of the most senior police officers from the scope of the right to organise could be regarded as justified under the provisions of Article G. This limitation on their rights was established by law and pursued the legitimate objectives of public safety and national security by aiming to prevent situations where the most senior police personnel were unable to attend to their official duties and responsibilities due to their involvement in union activity. It was also proportionate given that it was narrowly tailored to achieve these objectives, as the restriction only affected a limited number of very senior officers. The most stringent part of the restriction therefore fulfilled the requirements of the Charter, while the great majority of the police were allowed to establish representative organisations.
41. In the present case, the Respondent submits that retaining flexibility of working hours beyond the typical working day where members of the Defence Forces are required to carry out duties key to the maintenance of security in the State pursues the legitimate objective of public safety and national security. It is limited to duties beyond typical working duties as set out in the annexed list of duties for which allowances are payable. It is submitted that retaining this flexibility for these duties, with oversight of military management in every case and the possibility for members to raise issues relating to “the operation of the Organisation of Working Time Act 1997” is proportionate to the legitimate objective sought to be achieved, in accordance with Article G of the Charter.
42. In the context of the ongoing discussions between the Defence Forces representative associations under the C&A Scheme, as an accelerated provision and a gesture of good faith, the Defence Forces in correspondence to both associations (that is RACO and PDFORRA) on 13 August 2019, proposed that a 24-hour barrack duty would be applied as follows:
- a) a rest day following a 24-hour duty in barracks will be allowed following the completion of a 24-hour duty in barracks.
 - b) A Day in Lieu (DIL), additional to the Rest Day currently allowed in respect of weekend 24-hour barrack duties (i.e. those commencing on a Saturday or a Sunday). By default, this additional day will be continuous with the rest day (i.e. on the Monday following a Sunday rest day, or the Tuesday following a Monday rest day).
 - c) However, subject to the exigencies of service, a Unit Commander may order that this additional day be deferred for a minimum period necessary, of up to 14 days. This additional day will be allowed in such a manner as to have the effect of making provision for a weekend break per 7-day period within a reference period of 14 days.
43. These arrangements remain in place pending such time as the blanket derogation of the Defence Forces from the application of the Working Time Directive is revoked

¹⁰ *EuroCOP v Ireland*, Complaint No. 83/2012, decision on the merits of 2 December 2013, para. 79.

through legislative change. A copy of the correspondence of the 13 August 2019 is enclosed at **Annex 11**.

II. **Alleged violation of Article 2§2 of the Charter**

44. The Complainant claims that there has been a violation of Article 2§2 of the Charter, which provides that with a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay.
45. The Committee has held that “considering the different approaches adopted in different countries in relation to the forms and levels of such compensation [for work done on public holidays] and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday”.¹¹
46. The Defence Force Regulations, A. 11 (New Series), Leave, June 2011 (enclosed at **Annex 5**) prescribe the arrangements for leave in the Defence Forces. They include provisions for matters such as Annual Leave, Special Leave, Maternity Leave, Paternity Leave, Parental Leave, Carers Leave, Bereavement Leave and Career Breaks. Regulation 41 provides for Defence Force holidays:

(1) The following days shall be observed as Defence Force holidays:

1st January.	11th July.
17th March.	First Monday in August.
Good Friday.	15th August.
Easter Monday.	Last Monday in October.
First Monday in May.	25th December.
1916 Commemoration Day.	26th December.
First Monday in June.	

Such other days as the Minister may specially authorise. Members of the Defence Forces have received additional days at Christmas and Easter by Ministerial direction, which are not common place across the wider public service.

(2) When either the 25th or 26th December falls on a Sunday, the 27th December shall be observed a Defence Force holiday. Where any of the other holidays prescribed in subparagraph (1) falls on a Sunday, the day immediately following shall be observed as a Defence Force holiday.

(3) On Defence Force holidays, Defence Force members shall, as far as possible, be relieved of all normal routine duties. They may, however, be required to attend such ceremonial and/or special parades as may be ordered. Where, owing to the exigencies of the service, a member is

¹¹ Conclusions 2014, Andorra.

required to carry out normal duties or a ceremonial or special parade on a Defence Force holiday, such member shall be relieved of all normal duties on any day within 1 month after the Defence Force holidays concerned.

47. In addition, the following allowances are paid at a higher rate when carried out on a Defence Force holiday/public holiday:

The enlisted ranks:

- Aid to the Civil Authority Allowance
- Security Duty Allowance (SDA)
- Maintenance of Essential Services Allowance
- On Call Allowance N.S. Divers - Sat/Sun & DF holiday €29.34 (if called out the PDF member receives the full rate of allowance i.e. €58.66)
- On Call Allowance Portlaoise Hospital Guard - Sundays & DF holiday €58.49 (if called out the PDF member receives the relevant SDA rate for that day)

The officer ranks:

- Maintenance of Essential Services Allowance
- Security Duty Allowance

48. When required to work on a public holiday, a member of the Defence Forces will be paid their basic wage, plus military service allowance ("MSA"), plus any allowance payable at a higher rate than normal. In addition, they will be entitled to compensatory time off on any day within 1 month after the Defence Force holiday concerned. It is submitted that this cumulatively amounts to adequate compensation for work carried out on a public holiday.

49. In the alternative, the Respondent submits that retaining flexibility of working hours beyond the typical working day where members of the Defence Forces are required to carry out duties key to the maintenance of security in the State pursues the legitimate objective of public safety and national security. It is limited to duties beyond typical working duties as set out in the lists of duties for which allowances are payable at **Annex 12** (in respect of officers) and **Annex 13** (in respect of enlisted personnel). It is submitted that retaining this flexibility for these duties, with oversight of military management in every case and the possibility for members to raise issues relating to "the allowances and the occasion of the granting of all categories of leave including the quantum" and "the operation of the Organisation of Working Time Act 1997" is proportionate to the legitimate objective sought to be achieved, in accordance with Article G of the Charter.

III. **Alleged violation of Article 4§1 of the Charter**

50. The Complainant claims that there has been a violation of Article 4§1 of the Charter, which provides that with a view to ensuring the effective exercise of the right to a fair

remuneration, the Parties undertake to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.

51. The Committee has held that State parties must ensure that the lowest level of salary is at least equal to 60% of the national average wage.¹² It has also been held that where the net minimum wage is between 50% and 60% of the net average wage, it is for the State Party to establish that this wage permits a decent standard of living.¹³

52. In *GENOP-DEI / ADEDY v Greece*¹⁴ the Committee held that providing for a lower minimum wage to younger workers who are under 25 years old was not contrary to the Charter if it furthered a legitimate aim of employment policy and was proportionate to achieve that aim. It found such an aim to be when the younger workers are taking part in an apprenticeship scheme or otherwise engaged in a form of vocational training. Such a reduction in the minimum wage could enhance the access of younger workers to the labour market and could also be justified on the basis that it reflected a statistical tendency for people of that age to incur lower expenditure on average than other categories of workers when it came to housing, family support and other living costs.

53. The following statistics are the latest available from the Central Statistics Office:¹⁵

- Average weekly earnings were €864.32 in Q3 2022.
- Average hourly earnings were €26.17 in Q3 2022.

54. 60% of €864.32 is €518.60.

55. The document at **Annex 14** entitled “Rates of pay for enlisted personnel of the permanent defence force rate with effect from 1 March, 2023”, sets out a weekly salary on enlistment commencing at €343.07. This relates to apprentices in the Defence Forces.

56. It is standard across industry in Ireland that apprentices are excluded from the provisions of the National Minimum Wage Act 2000. The rates of pay for craft apprenticeship programmes are agreed within the relevant sector or are set out in Sectoral Employment Orders. The rates vary between occupations and sectors but in all cases, craft apprenticeship rates are less than the rate paid to fully qualified personnel.

57. It is submitted that the training of apprentices serves the legitimate aim of facilitating their access to the Defence Forces. Given the statistical tendency for people of that

¹² Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1

¹³ Conclusions XXI-3 (2019), Denmark.

¹⁴ General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, §60.

¹⁵ <https://www.cso.ie/en/releasesandpublications/ep/p-elcg/earningsandlabourcostsq22022finalq32022preliminaryestimates/>.

age to incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs, the Respondent submits that this lower rate of pay is proportionate to the aim sought to be achieved.

58. Furthermore, recruits and apprentices are provided accommodation and rations, which ensures they have a decent standard of living. Charges for these provisions ceased to be applied to recruits and apprentices with effect from 1 October 2018. This was agreed with PDFORRA through the C&A Scheme.
59. The starting salary for a new recruit (on completion of basic training of approximately 26 weeks) to a qualified three star private with effect from March 2023¹⁶ is €37,147 (inclusive of military service allowance) gross annual earnings. This is calculated as: Weekly pay of €560.32 + Military Service Allowance (MSA) per week of €151.59, so in total, €711.91 per week. This is more than 60% of the national average weekly earnings.
60. It would be very difficult to calculate net annual earnings in respect of all members of the PDF as there are a number of factors to take into consideration, e.g. even within one rank there will be people on different points of the pay scale. It would also be necessary to factor into account varying allowances which are paid for different duties performed and finally the rate of taxation. In the document enclosed at **Annex 15**, a number of scenarios are set out as examples of the average net pay for a Private Three Star on point one of the pay scale.

IV. Alleged violation of Article 4§2 of the Charter

61. The Complainant claims that there has been a violation of Article 4§2 of the Charter, which provides that with a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.
62. The Committee has held that the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker. Not only must the worker receive payment for overtime, but also the rate of such payment must be higher than the normal wage rate.¹⁷ It has held that this can either take the form of a higher rate of pay or more time off than the time worked overtime or a mix of both.¹⁸

¹⁶ The respondent provides figures from March 2023 as it notes that the Committee rules on the basis of the factual and legal position as of the date of its decision on the merits: *SAPAF v. Italy*, Complaint No. 143/2017, decision on the merits of 3 July 2019, para. 42; *CESP v. France*, Complaint No. 57/2009, decision on the merits of 1 December 2010, para. 52.

¹⁷ *CESP v. France*, Complaint No. 57/2009, decision on the merits of 1 December 2010, para. 31.

¹⁸ *CESP v. Portugal*, Complaint No. 60/2010, decision on the merits of 17 October 2011, para.21; see also Conclusions 2014, Slovenia.

63. Beyond the typical working day as set out at para. 33 above, members of the Defence Forces are called upon to carry out other duties for which various allowances are payable.
64. The rates of pay for various allowances vary in accordance with the level of seniority of the member and so are linked to the level of basic wage. The following are examples of allowances payable with a brief description of the corresponding duties.
65. Military Service Allowance (“MSA”) is an allowance in the nature of pay. It was first introduced for ranks up to Captain in 1979. It is designed to compensate members of the Defence Forces for the special disadvantages, i.e. hardship, danger and discipline, associated with military life. It was extended to all officers up to and including the rank of Colonel on foot of a recommendation of the Gleeson Commission from 1 January 1990. The Commission considered MSA as an integral part of salary and regarded the combination of line pay and MSA as making up what would generally be regarded as standard pay.
66. Security Duty Allowance (“SDA”) is paid in respect of a wide range of security duties which personnel are detailed to perform outside of normal duty hours. This includes aid to the civil power duties such as cash-in-transit escorts, prisoner escorts, explosive escorts and all duties necessary for security of military barracks/installations, including 24 hour and weekend duties. SDA cannot be paid concurrently with any other type of security allowance.
67. Maintenance of Essential Services Allowance is payable to members of the Permanent Defence Force who maintain essential services during industrial disputes or when undertaking other duties at the request of the civil authorities.
68. Aid to Civil Authority Allowance is paid to enlisted personnel when the Defence Forces periodically provides essential services in public emergencies. This is paid on a per duty basis to those engaged in the provision of aid to the civil authority outside normal hours of duty, often in dangerous and hazardous conditions, e.g. during flood or snow relief where such support has been requested under existing arrangements.
69. Daily diving allowance is paid to qualified Naval Service divers engaged in diving duties – Naval Service Diving Section (“NSDS”) personnel and ships diving team engaged in diving duties. This allowance is in respect of operations such as body recovery, disposal of mines and ordnance such as torpedoes and buoys off ships.
70. Explosive Ordnance Disposal Duty Allowance is payable to ordnance corps personnel engaged in EOD (bomb disposal) work in respect of each day spent on rostered 24-hour EOD duties.
71. The Army Ranger Wing allowance is an allowance specific to the Army Ranger Wing (“ARW”), which is the Special Forces unit within the Irish Defence Forces. It was introduced in November 1979 to compensate personnel for the nature of the duties

concerned. The allowance is paid on a continuous basis including periods of annual leave, sick leave etc.

72. A claim for an increase in this allowance, initiated by the PDF representative associations, was brought to adjudication through the C&A Scheme in 2010. The adjudicator ruled that the allowance should be adjusted to €200 with effect from 1 June 2006 and be reviewed and adjusted upward in 2014 (having regard to national industrial relations norms in the meantime) and reviewed every third year thereafter. Following correspondence, the Adjudicator wrote to both the Department of Defence and PDFORRA on 15 December 2010, where he recognised that the findings of the Adjudication could not be implemented while the emergency legislation introduced to stabilise the economy remained in force.
73. The subsequent improvement in the Irish economy in the second half of that decade provided the scope to increase the ARW Allowance to the amount recommend by the Adjudicator. Arising from the terms of the Public Service Stability Agreement, 2018-2020, the Official side made an offer to implement the findings of the outstanding adjudication with effect from 1 October 2018, on a non-retrospective basis. RACO accepted the offer whereas PDFORRA (the Permanent Defence Force Other Ranks Representative Association) initially rejected it and commenced legal proceedings. On 11 July 2019, PDFORRA wrote to the Department agreeing to discontinue the legal proceedings on a without prejudice basis and accept the award of the adjudication from 1 October 2018. The allowance was increased with effect from 1 October 2018.
74. The current rate of the ARW Allowance is €214.34 per week with effect from 1 March 2023 for personnel enlisted pre 1 January 2013 and €225.63 for personnel enlisted post 1 January 2013. The rate of the allowance for Commissioned Officers is currently €216.48 per week.
75. In respect of the Naval Service, a sea-going service commitment scheme for Naval Service personnel came into effect from 1 January 2021. The Scheme is aimed at retaining experienced personnel and incentivising those personnel to undertake sea going duties. The scheme was initially open to applications from Officers and enlisted personnel in the Naval Service, with a minimum of three years' service, serving on board a Naval Vessel at enlisted ranks of Able Rating or above, or Officer ranks of Ensign and above. Following a review of the Scheme in 2022, the eligibility criteria to apply has been reduced from three years to one years' service.
76. In addition, a sea-going naval personnel tax credit was introduced in the 2019 Finance Act, to incentivise sea going duties for members of the Naval Service. The tax credit was initially available as a temporary measure in the 2020 year of assessment only. It has since been extended to the 2023 tax year.
77. A joint civil/military review of sea-going allowances has been conducted to consider their replacement with less complex sea-going duty measures and a submission has been made to the Department of Public Expenditure and Reform seeking approval for the consolidation of all sea-going allowances. Discussions are ongoing in this respect.

78. Generally, for all members of the PDF, any allowance payable would be in addition to both basic pay and MSA.
79. If the example of a three star private on point one of the pay scale for that rank is taken, their basic weekly pay is €560.32 for a typical 40 hour week, which is an hourly rate of €14.00.
80. When MSA (€151.59 per week or €3.78 per hour) and SDA (at the rate for 24 hours between Monday and Saturday, so €61.56 or €2.57 per hour) is added to this, the rate per hour for the 24 duty is €20.36. This is more than a 10% increase to the basic rate of pay, which was held to be a minimum rate for overtime in *CESP v. France*¹⁹.
81. In the alternative, the Respondent submits that retaining flexibility of working hours beyond the typical working day where members of the Defence Forces are required to carry out duties key to the maintenance of security in the State pursues the legitimate objective of public safety and national security. It is limited to duties beyond typical working duties as set out in the annexed list of duties for which allowances are payable. It is submitted that retaining this flexibility for these duties, with oversight of military management in every case and the possibility for members to raise issues relating to “claims for specific allowances for any type of duty, including those duties which of their nature involve long hours” and “the operation of the Organisation of Working Time Act 1997” is proportionate to the legitimate objective sought to be achieved, in accordance with Article G of the Charter.

D. Conclusion

82. The Respondent requests that the Committee rule that there has been no violation of Articles 2§1, 2§2, 4§1 and/or 4§2 of the Charter.
83. In respect of the complaint under Article 2§1, typical working hours for members of the Defence Forces are 40 hours per week. For duties beyond these hours, allowances are processed by recording the duty on the Personnel Management System (PMS), approved by military management and then uploaded into payroll. Retaining flexibility of working hours beyond the typical working day where members of the Defence Forces are required to carry out duties key to the maintenance of security in the State pursues the legitimate objective of public safety and national security. It is limited to duties beyond typical working duties as set out in the annexed list of duties for which allowances are payable. It is submitted that retaining this flexibility for these duties, with oversight of military management in every case and the possibility for members to raise issues relating to “the operation of the Organisation of Working Time Act 1997” is proportionate to the legitimate objective sought to be achieved, in accordance with Article G of the Charter.

¹⁹ *CESP v. France*, Complaint No. 68/2011, decision on the merits of 5 November 2012, para. 77.

84. In respect of the complaint under Article 2§2, the Defence Force Regulations, A. 11 (New Series), Leave, June 2011 set out a list of Defence Force public holidays, which exceed public holidays in Ireland. When required to work on a public holiday, a member of the Defence Forces will be paid their basic wage, plus military service allowance (MSA), plus any allowance payable at a higher rate than normal. In addition, they will be entitled to compensatory time off on any day within 1 month after the Defence Force holiday concerned. It is submitted that this cumulatively amounts to adequate compensation for work carried out on a public holiday. In the alternative, it is submitted that the criteria of Article G are met.
85. In respect of the complaint under Article 4§1, the starting salary for a new recruit (on completion of basic training of approximately 26 weeks) to a qualified three star private with effect from March 2023 is more than 60% of the national average weekly earnings. While the salary for apprentices is less than 60% of the national average weekly earnings, it is submitted that the criteria of Article G are met in this respect.
86. In respect of the complaint under Article 4§2, beyond the typical working week of 40 hours, members of the Defence Forces are called upon to carry out other duties for which various allowances are payable. The rates of pay for various allowances vary in accordance with the level of seniority of the member and so are linked to the level of basic wage. Any allowance payable would be in addition to both basic pay and MSA. If the example of a three-star private is taken, their basic weekly pay is €560.32 for a typical 40-hour week, which is an hourly rate of €14.00. When MSA (€151.59 per week or €3.79 per hour) and SDA (at the rate for 24 hours between Monday and Saturday, so €61.56 or €2.57 per hour) is added to this, the rate per hour for the 24 duty is €20.36. This is more than a 10% increase to the basic rate of pay. In the alternative, it is submitted that the criteria of Article G are met.