EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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Case Document No. 2

European Organisation of Military Associations and Trade Unions (EUROMIL)
v. Spain
Complaint No. 219/2022

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 15 November 2023

MINISTERIO DE PRESIDENCIA,
JUSTICIA Y RELACIONES CON LAS
CORTES

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

THE GOVERNMENT'S OBSERVATIONS ON THE MERITS

COLLECTIVE COMPLAINT

No 219/2022

European Organisation of Military Associations and Trade Unions (EUROMIL)

v. Spain

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I. Procedural Background

1. The Committee we are honoured to address, in a letter dated 18 March 2022, provided us with a transcript of Collective Complaint No 219/2022, European Organisation of Military Associations and Trade Unions (EUROMIL) v. Spain.

2. In a letter dated 21 September 2022, the Committee informed us on its decision of 12 September 2022 to declare the complaint admissible and indicated a time limit for submissions on the merits of the complaint.

3. In accordance with that time limit, we hereby present the following remarks to support our request for the complaint to be dismissed.

II. Response to issues brought forward in the collective complaint

A. Preliminary remarks

4. Prior to any further consideration, we want to clarify matters around a number of aspects observed throughout the complaint, as well as to indicate, in broad terms, the content of the observations we will hereby present.

5. First of all, the content of the various complaints voiced by EUROMIL regarding the alleged infringement by Spain of the rights of the members of the Armed Forces (AF by its acronym) and the Civil Guard (GC by its acronym) presents recurring ambiguities and lacks supporting evidence.

6. Where we say ambiguities, perhaps we should say contradictions because, at times, the complaint seems to declare that it is not so much a case of the Spanish legislation violating the Social Charter, but rather a practice that not being aligned with it. For instance, it states that: "*Organic Law 9/2011 foresees the Committee of Personnel, through which military associations have the right to be heard on the issues of their members; Organic Law 11/2007 foresees the Council of the Civil Guard, through which professional associations of the Civil Guard have the right to be heard on the issues of their members*

(see supra). EUROMIL argues that said provisions have not been implemented into practice". In this way, the complaint is based not on Spanish legislation violating Articles 5 and 6 of the ESC(r), but on the fact that the State is not adequately implementing rules that have been democratically approved. It states so clearly, particularly in the complaints with regards to Article 6: "*The Organic Law 9/2011 on the rights and duties of members of the Armed Forces foresees that the right for military associations to be heard on the issues of the professional, remuneration and social status of their members takes place in the Committee of Personnel of the Armed Forces, (...) However, EUROMIL highlights that this right is not currently respected in practice, and Spain is not promoting a fair and equal joint consultation*."

7. However, on other occasions and in a rather contradictory manner, it appears to refer to legislation not so much as violating rights but as being insufficient ("*are insufficient for the protection of the rights of military personnel. In fact, the current regulation of the right of professional association does not allow for an active and effective defence of the legitimate rights and interests of the military in Spain*").

8. In any case, most of the complaints put forward are based on the fact that the rights of the members of the military and the Civil Guard, despite the far-reaching recognition of rights in their respective regulations, are not being respected or implemented "*in practice*". The serious matter here is how the complaint does not offer any evidence of what that practice is actually like and it does not even provide specific examples that may indicate that the alleged collective practice in breach of the Charter is taking place.

9. At this point, it should be recalled that, as the Committee points out, collective complaints must be supported by evidence; it is also necessary to highlight that the existence of isolated cases of infringement of legislation, however varied, do not tantamount to a collective practice that may elicit a collective complaint.

10. This should in itself lead to dismissing the complaint, if not declaring it inadmissible on the grounds of evident lack of substantiation of the complaints put forward by EUROMIL.

11. Beyond that and bearing in mind the respect due to the Committee we are honoured to address and to the collective complaints system established by the Additional Protocol

of 9 November 1995, we will now offer a systematic analysis of Spanish legislation and practice with regards to military and Civil Guard professional associations and the systems in place to afford them a collective dialogue with the Administration for the defence of their interests. All of this, with a view to making clear that the restrictions to the rights and freedoms to organise prescribed for the members of the military and the Civil Guard meet all requirements included in Article G of the ESC(r) for them to be lawful.

12. At any rate, further detailed information can be found in the specific reports drafted up by the Ministry of Defence on matters related to the Armed Forces, and the Ministry of the Interior, with regards to the Civil Guard. We will refer here to the full version of those reports and their corresponding Annexes.

B. *Right to organise, Article 5 ESC(r)*

1.Summary of the Complaint

13. The complaint lodged by the complainant organisation can be summarised in the following declarations:

> *"EUROMIL argues that Spain has violated, and is continuing to violate, Article 5 of the ESC as the limited form of workers' representation through the existing professional military associations does not constitute a satisfactory implementation of the said Article."*
>
> *"EUROMIL argues that said provisions have not been implemented into practice. The right to freedom of association is theoretically granted to military personnel, however, the role and competences of military associations have been extremely restricted."*
>
> *"In this regard, contrary to what stated by the Spanish government, the Organic Law 9/2011, in relation to Armed Forces personnel, and the Organic Law 11/2007, in relation to Civil Guard personnel, are insufficient for the protection of the rights of military personnel. In fact, the current regulation of the right of professional association does not allow for an active and effective defence of the*

legitimate rights and interests of the military in Spain, thus depriving military representative associations of expressing their demands on working conditions and pay in an appropriate and effective manner."

"EUROMIL argues that the lack of effective protection for the Armed Forces stems from the non-binding participation in the Committee of Personnel and from the fact that the body is fully controlled by the Ministry of Defence. The composition of the Committee is designed in such a way that it pivots on the presence of the associative representatives in a collegiate body, dependent on, and controlled by, the Ministry of Defence. By means of the said framework, military professional associations are not consulted, and the opinions submitted to the Committee of Personnel are not taken into account. Therefore, the role and competences of military associations have been extremely restricted. The same situation applies to the Civil Guard, fully controlled by the Ministries of Interior and Defence."

2.Relevant international legislation

a) European Social Charter

14. Article 5 —The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

b) Other relevant legislation

15. At this point, we must mention the provisions in Article 11 of the European Convention on Human Rights where it says:

> *"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
>
> *2. No restrictions shall be placed on the exercise of these rights other than such as 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

16. Nevertheless, it must be recalled that in the moment of the deposit by the Kingdom of Spain of its instrument of ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature in Rome on 4 November 1950 and amended by Additional Protocols Nos 3 and 5 of 6 May 1963 and 20 January 1966, Spain, in accordance with Article 64 of the Convention, made reservations in relation to the application of Article 11 ECHR 1950, freedom of assembly and association in the following terms:

> *"Article 11, insofar as it may be incompatible with Articles 28 and 127 of the Spanish Constitution*[1]*."*

17. For the complaint we are dealing with here, in view of those reservations, two conclusions follow:

- Doctrine as per Judgements by the ECtHR regarding Article 11 and, in particular, doctrine as per Judgement of 2 October 2014 (Matelly v. France and ADEFDROMIL v. France) —where the Court examined the

[1] https://www.coe.int/en/web/conventions/concerning-a-given-state-or-the-european-union-?module=declarations-by-state&territoires=&codeNature=0&codePays=SPA&numSte=005&enVigueur=true&ddateDebut=05-05-1949&ddateStatus=11-09-2023

prohibition to create and join trade unions prescribed by French legislation for members of the Gendarmerie in view of Article 11 of the Treaty (for which, incidentally, France, unlike Spain, did not make any reservations)— is not fully applicable to the situation of those rights concerning military personnel in Spain, so as to sufficiently support a refutation of the aforesaid restrictions on the right to organise and the right to strike imposed by Spanish legislation.

- On the other hand, Spain applies a greater margin of discretion regarding restrictions on the right to organise and the right to strike of members of the AF and the GC, at least when compared with other States that have not made similar reservations.

3.Relevant case-law

18. In accordance with several decisions by the Committee, Article 5 of the Charter provides for States Parties to impose restrictions on members of the Armed Forces and grants them ample margin of appreciation in that respect, as per terms established by Article G of the Charter[2]. Nevertheless, these restrictions cannot go to the extreme of completely eliminating the right to organise, as would be the case with a general ban on professional associations of trade-union nature and on such associations joining national federations/associations.

19. Article 5 of the Charter allows national legislation to require that professional police associations be exclusively composed of members of the police force[3]. The situation is aligned with provisions in Article 5 when members of the police force are not allowed the right to form trade unions but are granted permission to set up professional associations with characteristics and competencies similar to those of trade unions[4].

[2] European Council of Trade Unions (CESP) v. France, Complaint No101/2013, decision on the merits of 27 January 2016, §80
[3] European Council of Police Trade Unions (CESP) v. Portugal, Complaint No 11/2001, decision on the merits of 22 May 2002, §35
[4] European Confederation of Police (EuroCOP) v. Ireland, Complaint No 83/2012, decision on the admissibility and merits of 2 December 2013, §77

20. It follows from all this that, firstly, police and law enforcement agencies officers in general must be able to set up or join genuine organisations for the protection of their material and moral interests and, secondly, that such organisations should be able to benefit from most trade union prerogatives[5]. Basic trade union prerogatives means the right to express demands regarding working conditions and pay, the right of access to the working place and the right of assembly and speech.

21. In particular, concerning the Armed Forces, the Committee has established that Article 5 of the Charter allows States Parties to impose restrictions on members of the Armed Forces and grants them **ample margin of appreciation in that respect**, as per Article G of the Charter[6].

4.Relevant Spanish Legislation on the rights of members of the Armed Forces and Civil Guard to set up professional associations

a) Spanish Constitution and general legislation on the right to organise

22. Article 8 of the Spanish Constitution[7] establishes the functions given by the Constitution to the Armed Forces and their submission to that very Constitution:

Article 8

1. The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order.

2. The basic structure of military organisation shall be regulated by an organic law in accordance with the principles of the Constitution.

[5] European Council of Police Trade Unions (CESP) v. Portugal, Complaint No 11/2001, decision on the merits of 22 May 2002, §26
[6] European Council of Trade Unions (CESP) v. France, Complaint No101/2013, decision on the merits of 27 January 2016, §80
[7] https://www.boe.es/eli/es/c/1978/12/27/(1)/con

23. Article 28 of the Spanish Constitution, when establishing the freedom to organise as a fundamental right, also foresees lawmakers might limit that right in the case of the Armed Forces and other armed services or bodies subject to military discipline:

> *"Article 28*
>
> *1. Everyone has the right to freely join a trade union. The law may limit the exercise of this right or make an exception to it in the case of the Armed Forces or Institutes or other bodies subject to military discipline, and shall regulate the special conditions of its exercise by civil servants. Trade union freedom includes the right to set up trade unions and to join the union of one's choice, as well as the right of the trade unions to form confederations and to found international trade union organisations, or to become members thereof. No one may be compelled to join a trade union.*
>
> *2. The right of workers to strike in defence of their interests is recognised. The law regulating the exercise of this right shall establish the guarantees necessary to ensure the maintenance of essential community services."*

24. On the other hand and in view of the relevance that we shall analyse later, Article 22 of the Spanish Constitution recognises the right of association:

> "*Article 22*
>
> *1. The right of association is recognised.*
>
> *2. Associations which pursue ends or use means classified as criminal offences are illegal.*
>
> *3. Associations set up on the basis of this article must be recorded in a register for the sole purpose of public knowledge.*
>
> *4. Associations may only be dissolved or have their activities suspended by virtue of a justified court order.*
>
> *5. Secret and paramilitary associations are prohibited."*

25. Further to all this, the right to freely organise is regulated by Organic Law 11/1985 of 2 August on Trade Union Freedom[8], which mentions in its statement of reasons that:

> *"The subjective scope of the law is defined to include all hired ordinary personnel (not civil servants both working for the public Administration or not. The only exception to the exercise of this right is the case of members of the Armed Forces and Armed Services of military nature, as well as Judges, Magistrates and Public Prosecutors, while on active service; this exception is applied in accordance with Articles 28, 1 and 127(1) of the Spanish Constitution. A specific piece of legislation shall regulate the rights of Law Enforcement Agencies and Armed Services of civil nature."*

26. In that sense, paragraph 3 of Article 1 states that:

> *"There is an exception to the exercise of this right in the case of members of the Armed Forces and Armed Services of a military nature."*

b) Legislation concerning the Armed Forces

27. As the report by the Ministry of Defence (here attached) points out, since the approval of the Spanish Constitution, Spanish legislation and jurisprudence have evolved towards a gradual positive recognition of the right of association of members of the military, which is permanently established by Organic Law 9/2011 of 27 July on the Rights and Obligations of Members of the Armed Forces[9] (hereinafter "LO 9/2011").

28. The Statement of Reasons states very clearly that the Spanish lawmakers' intention is to establish, for the members of the military, the principle of recognition of the

[8] https://www.boe.es/eli/es/lo/1985/08/02/11/con

[9] https://www.boe.es/eli/es/lo/2011/07/27/9/con

Fundamental Rights enshrined in the Constitution without any limitations beyond those absolutely necessary in order to guarantee the Armed Forces ("AF") correct functioning:

> *"Members of the Armed Forces enjoy the same fundamental rights and civic liberties generally granted to all citizens and the limitations in their exercise shall be proportionate and respectful of its essential content. Such limitations must be established so that the Armed Forces, while maintaining its characteristic traits of discipline, hierarchy and unity and the principle of neutrality, are fit to perform their duties in the sphere of national security and defence.*
>
> *Regarding the obligations intrinsic to the military, the fundamental ones are to defend Spain, to undertake the missions entrusted to it by the Constitution and the Organic Law on National Defence, and to act according to the rules of military conduct, based on traditional militia values and adapted to the current reality of Spanish society and its integration in the international scene.*
>
> *Based on the criteria mentioned above, this law completes the definition of the status of members of the Armed Forces, based on an adequate balance between exercising their rights and assuming their obligations, in order to make it possible for them to perform the missions of the Armed Forces while applying the principle of efficiency, relevant to the whole Public Administration. Article 103(1) of the Spanish Constitution refers to it and it is worthy of particular consideration in the case of members of the military who, as custodians of forceful action, must therefore be trained and prepared in order to, following Government orders, make adequate use of it."*

29. It is worth highlighting, among the obligations of the Armed Forces and as a result of their essential duties of keeping public order and security and defending the State, the obligation of permanent availability established in Article 22:

> *"Article 22. Availability, working hours, paid and unpaid leaves of absence.*
>
> *Members of the military will be permanently available for service. Demands posed by such availability will be adapted to the specific characteristics of their posting and circumstances.*

(…)

The service needs prevail over considerations regarding dates and duration of holidays and paid and unpaid leaves of absence."

30. Going now back to the rights of members of the Armed Forces, and as one of the novelties introduced by LO 9/2011, focused on that matter, this Law introduces the regulation of professional associations. In that respect, it is explained in Section II of its Statement of Reasons that:

"The most relevant novelties are the regulation of the right of association and the creation of the Committee of Personnel of the Armed Forces and the Military Life Observatory.

With the first one, significant qualitative progress is being made by regulating the exercise of that fundamental right in the professional sphere, which is one of the ways to promote participation and collaboration of members of the Armed Forces in the definition of their personnel scheme.

In accordance with Organic Law 1/2022 of 22 March on the Right of Association, members of the military may set up and join associations. The referral to the Royal Ordinances for the Armed Forces approved by Law 85/1978 of 28 December is substituted by this organic law, which establishes the specific characteristics of the right of association for professional purposes, based on Articles 8, 22 and 28 of the Spanish Constitution and the interpretation resulting from Judgement 219/2001 of the Constitutional Court of 31 October.

In that sense, it regulates professional associations of members of the Armed Forces for the defence and promotion of their professional, economic and social interests, establishing the rules concerning their creation and legal status, and setting up a specific Registry of the Ministry of Defence for these associations.

Associations may make proposals and address requests and suggestions, as well as receive information on matters conducive to achieving their statutory aims. Following the jurisprudential criteria alluded to, these forms of participation shall not cover procedures or attitudes of a trade union nature, such as collective

bargaining, collective actions in cases of conflict or the exercise of the right to strike.

Those associations whose number of members reaches a given threshold shall be represented in the Committee of Personnel of the Armed Forces and take part, through reports and consultations, in the creation of legislative projects that have an impact on their personnel scheme."

31. On this basis, Article 7 of Organic Law 9/2011 establishes that the main purpose and the basis of the restrictions on the freedom to organise for members of the Armed Forces are to ensure both, the neutrality of the Armed Forces and that of its members, and their proper functioning. Said article provides that:

"Article 7. Political and union neutrality

1. Military personnel are subject to the political neutrality obligation. They may not form or join political parties and shall keep a strict neutrality in public as regards political parties' action.

2. Military personnel may not exercise the right to organise and therefore, neither may they form or join trade unions nor participate in trade union activities. Nor may they exercise said right within the framework of the Armed Forces, only civil personnel may, as provided for in Organic Law 11/1985 of 2 August on Trade Union Freedom and other applicable regulations. They shall, in all cases, remain neutral with regard to trade unions action.

Members of the Armed Forces may not resort to means associated with trade union action such as collective bargaining, collective actions in cases of conflict and the exercise of the right to strike. Neither may they conduct alternative or similar actions to this right nor agreed actions aimed at disrupting the normal operation of the units of the Armed Forces."

32. However, the right to association is recognised under the general provisions of said fundamental right, subject to exemptions in Organic Law 9/2011. Thus Article 14 states:

"Article 14. Right to associate

1. Military personnel have the right to freely associate and establish associations for legal purposes as provided for in Organic Law 1/2002 of 22 March on the Right of Association.

2. Where the exercise of this right is intended to defend their professional interests and the rights set out in this Organic Law, Title III, Chapter I shall apply.

3. Associations of members of the Armed Forces may not conduct political or trade union activities, nor join political parties or trade unions."

33. Keeping in mind the purpose of the lawmaker, we will discuss now the establishment, functioning and powers, and guarantees of professional military associations provided for in Title III of Organic Law 9/2011 ("Exercise of the Right of Professional Association").

i. Establishment, composition and functioning

34. Rules governing the establishment and composition can be grouped in: a) in order to defend their professional, economic and social interests, military personnel may join professional associations, provided for by law, comprising only professional members of the Armed Forces; b) based on the obligation of union neutrality, they may not join trade unions, but they may get together and also join international organisations identical in nature; c) establishment is free (the only obligation is to register in the appropriate registry. It is a regulated act to simply verify compliance with legal requirements) and its functioning is governed by the rules established in the Statutes by the members.

35. The articles concerning these issues are:

"*Article 33. Purpose, scope and duration*

1. Professional associations of members of the Armed Forces aimed at promoting and defending the professional, economic and social interests of their members, shall be governed by the provisions of this Title.

2. In addition to the said purpose, they may engage in social activities intended to promote the profession, the military professional ethics and make security and

defence known, but they may not interfere with security and defence policy decisions, the planning and execution of military operations or the use of force.

3. Professional associations shall comply with the political and union neutrality principle and their names or statutes may not include political or ideological references. They may not have links to political organisations or trade unions, make public statements jointly with them, nor take part in their meetings or demonstrations.

4. They shall be national in scope, established for an indefinite duration and their registered office may not be established in the units or the offices of the Ministry of Defence.

5. In no event professional associations shall be for-profit."

"Article 34. Composition

1. In order to join professional associations, members of the Armed Forces shall be in any of the administrative situations by which, in accordance with the Law on Military Career, they are subject to the general regulations on rights and duties as they are in active service.

2. Members of these associations may, after retirement, remain members in accordance with the limitations provided by this law in so far as the relevant statutes so allows.

3. Members of the Armed Forces may only join professional associations provided for in this Chapter, which may only group together. They may also join international associations of identical nature.

4. Students undergoing military training who are not military professional officers may not join professional associations.

5. Only one of the professional associations provided for in this chapter may be joined."

"Article 36. Registration of professional associations

1. Associations shall register in the Registry of Professional Associations of Members of the Armed Forces set up for this purpose at the Ministry of Defence so as to fall within the scope of this Title.

2. Registration shall be made at the request of any of the founders who shall submit to the said Registry the foundational act along with the statutes and a list of the founders specifying who shall represent the association.

3. The content of the application for registration and the statutes shall comply with Organic Law on the Right of Association and this Organic Law.

4. Registration may only be refused, through a reasoned decision by the Minister of Defence, where the foundational act or the statutes do not comply with the requirements laid down in this Organic Law or in Organic Law on the Right of Association.

5. The deadline for registration shall be three months from the reception of the application by the relevant body. The request shall be considered as accepted if no express decision is notified after the said period has elapsed.

6. Where mistakes are identified in the application for registration or documents attached, the representatives of the association shall be notified, the deadline for decision on the registration be suspended and a new period of twenty days to correct said errors shall commence. Should they fail to do so, the request for registration shall be refused."

(...).

"Article 37. Statutes

1. The statutes of associations shall contain the following:

a) the name

b) the registered office and the national scope of activity

c) the purposes and activities precisely described

d) the requirements to become a member, establishing the group or groups of military personnel that may join them, forms to join the association or leave it, sanctions and removal of its members and, if applicable, types thereof. Consequences of non-payment of membership fees by members may also be included.

For the purposes of article 48(2), it shall be established whether only one or several ranks of commissioned officers, non-commissioned officers, rank and file soldiers, or seamen, or all of them may join the association.

e) The rights and duties of the members and, where appropriate, each of the forms to join the association.

f) The criteria that guarantee the democratic functioning of the association ensuring that pluralism is fully respected.

g) The governing and representative bodies, their composition, rules and procedure for the election and replacement of their members, their responsibilities, length of office, grounds for dismissal, procedure for deliberation, adoption and implementation of agreements, and persons or persons in positions to certify them, as well as the requirements for the aforementioned bodies to be validly constituted, and the number of members necessary to hold meetings or propose items on the agenda.

h) The administration, accounting and document system as well as the closing date of the financial year of the association.

i) The initial assets and financial resources to be used.

j) The causes for dissolution and allocation of the assets in such an event, which may not affect the non-profit nature of the association.

2. The rules laid down in Organic Law on the Right of Association as regards functioning, names, internal rules, accounting and document obligations, accountability, amendments to statutes, dissolution and liquidation of associations shall applied to these associations for other matters not covered by this law."

ii. Powers, means and guarantees

- *<u>Rights</u>*

36. The list of rights and powers of professional military associations are set forth in Article 40 of Organic Law 9/2011 subject only to the restrictions provided for by the said law, in particular those required so as to ensure the proper functioning of the Armed Forces (Article 41).

"Article 40. Rights of professional associations

1. Professional associations registered in the Registry of Professional Associations of Members of the Armed Forces shall be entitle to:

a) Make proposals, issue reports, submit applications and make suggestions related to their purposes.

b) Advise and provide support and assistance to their members and legally represent them before the relevant Public Administrations bodies.

c) Be informed by the Ministry of Defence on personnel scheme, social protection and any other issue necessary to achieve the objectives of the statutes.

2. *Associations that comply with the requirements set out in Article 48(2) may*:

a) Be represented on the Committee of Personnel of the Armed Forces.

b) Contribute, through reports or consultations, to drafting legislation affecting personnel scheme.

c) Make suggestions or reports regarding matters for which the Committee is responsible."

"Article 41. Exercise of rights

The exercise of the right of professional association shall be carried out so as to ensure that the missions of the Armed Forces are fulfilled, operations are

conducted, their code of ethics is observed and the provisions of this Law are complied with."

37. However, they are not allowed to call to strike or collective bargaining (in the sense provided by legislation on the freedom to organise). We will, nevertheless, return to this issue when we analyse the claims of the complaint regarding Article 6 of the Revised European Social Chart.

"Article 42. Exemptions

1. The call to the right to strike, the conduct of alternative actions to this right, collective bargaining and collective action in cases of conflict are excluded from the scope of action of professional associations as well as actions not covered by the rights to which members of the Armed Forces are entitled to in this law, particularly those set out in Article 12 and 13.

2. Professional associations may not conduct paramilitary activities nor receive any theoretical or practical training of similar nature."

- *Means, premises and subsidies*

38**.** Organic Law 9/2011 not only provides for the said rights of professional associations but also for mechanisms that enable them to perform their tasks and defend the military personnel's professional interests. It should be noted that the Ministry of Defence and its representative body in the autonomous regions or provinces are obliged both, to make it possible for professional associations to publish announcements and notices, and provide premises to hold meetings.

"Article 44. Means for associations.

1. Units shall provide places and ensure procedures to post announcements, notices or publications of professional associations so they are made public. The Ministry of Defence shall facilitate the said dissemination through general electronic communication.

2. The representative body of the Ministry of Defence in the autonomous regions and the representative body in the provinces shall provide appropriate common premises and means to be used by professional associations through agreements reached with associations that comply with the requirements laid down in Article 48(2).

3. For the implementation of the previous paragraphs, restrictions of Article 41 shall be considered, particularly, restrictions for military units conducting military exercises and operations.

4. Associations may not use premises belonging to or provided by political organisations or trade unions."

"Article 45. Convening and holding of meetings by associations

1. Professional associations of members of the Armed Forces may hold meetings according to their statutes and by their own means provided that the provisions of the general legislation on the matter are fulfilled.

Associations may request for permission to use the premises referred to in the previous article to meet or hold meetings of their governing bodies or working parties. For security control purposes, the representatives of the associations shall inform sufficiently in advance of the identity of the participants.

2. Associations that comply with the requirements set out in Article 48(2) may request the Heads of the representative bodies of the Ministry of Defence in the autonomous regions or provinces to use the premises of the representative bodies of the Ministry of Defence in the autonomous regions or provinces in preference to others to hold information meetings for members of the Armed Forces. In the event that the request may not be fulfilled due to lack of availability of suitable premises, the Heads of the representative bodies of the Ministry of Defence in the autonomous regions or provinces shall take the appropriate steps to find suitable premises that may be located in the facilities of the Ministry of Defence other than those of the operational units of The Force and The Force Supporting Bodies of the Armed Forces.

3. The application for permission to hold information meetings shall be addressed to the Heads of the representative bodies of the Ministry of Defence

in the autonomous regions or provinces seventy-two hours at the latest. Place, date, time, intended duration and purpose shall be specified. Also, the personal data of the signatories that prove to be representatives of the association entitled to hold the meeting, in accordance with its statutes, and, if appropriate, the request of suitable premises, shall be included.

Should no objections be raised by the competent authority through an express decision twenty-four hours before the date of the meeting, it shall be hold with no additional formalities required.

4. Meetings shall be held outside regular working hours, shall not interfere with the operation of the units, nor with being on call or providing services, and not be convened or held during military exercises or operations. Organisers of meetings shall be responsible for its orderly conduct."

39**.** Organic Law 9/2011 also regulates the financial resources for professional associations and provides for the possibility of obtaining public funds:

"Article 35. Financial Scheme

1. Professional associations may be financed from membership contributions or other financial resources provided for in their statutes.

Private donations may never be accepted.

2. Receipt of public funds, when applicable, shall be financed out of the General State Budget and be governed by Law 38/2003 of 17 November on General Subsidies.

3. The financial scheme of professional associations shall be subject to the principles of transparency and publicity".

40. As stated in the attached report of the Ministry of Defence, Ministerial Order 40/2022 of 7 July on measures to support professional military associations, pursuant to Article 35 of Organic Law 9/2011 and acting on the proposals on associations made by the Committee of Personnel of the Armed Forces (hereinafter COPERFAS), allows, for the first time, the granting of subsidies to associations represented at the Committee of Personnel of the Armed Forces. The aim is to encourage and stimulate participation and

activity of professional associations, facilitating their organisation and operation, and the achievement of their objectives, in general. This has resulted in a call for public subsidies by Resolution 1/2022 of 8 September of the Undersecretariat of the Ministry of Defence adopting a call for subsidies to professional associations of members of the Armed Forces for the year 2022.

41. The last call has been issued by Resolution of 27 March of 2023 of the Undersecretariat of the Ministry of Defence adopting a call for subsidies to professional associations of members of the Armed Forces for the year 2023[10].

- *Institutional representation*

42. One of the main powers that professional military associations have to defend their members' professional interests, provided certain requirements of representativeness are met, is the right to participate in the Committee of Personnel of the Armed Forces which is defined by Organic Law 9/2011 as the "participation body of professional associations" (Article 45).

43. As this matter is particularly relevant in responding to the complaints for violation of Article 6, we will address this later on.

44. However, and as rightly pointed out in the attached report of the Ministry of Defence, the institutional representative functions of professional associations are wider; other legal rules also expressly provide for their participation in other bodies or forums to defend their interests:

[10] The Spanish State Official Gazette No 77 of 31 March published an extract from said resolution of the Undersecretariat of the Ministry of Defence of 27 March 2023 with the link to go to the full text of the call. Ordinance DEF/670/2022 of 7 July provides for the basis governing the granting of subsidies to professional associations of members of the Armed Forces (Spanish State Official Gazette No 171 of 18 July 2022).

- Armed Forces Social Security Institute (ISFAS) Executive Board. As set forth in Article 14(1)(b) 8º of Royal Decree 1726/2007 of 21 December adopting the Social Security General Regulations of the Armed Forces, the ISFAS Executive Board has a member to act on behalf of all professional associations of members of the Armed Forces which are represented on the Committee of Personnel of the Armed Forces. This representative is elected with the agreement of all associations represented in COPERFAS.
- Interministerial Commission. Royal Decree 16/2019 of 25 January on the establishment and regulation of the Interministerial Commission for Coordination and Monitoring of Measures by the Defence Committee of the Congress of Deputies provides in its Article 6(2) (drafted by Royal Decree 142/2021 of 9 March) that: *"According to the matters to be dealt with, the Chairperson of the Permanent Commission may request other representatives of the General State Administration and public bodies to attend meetings, as well as representatives of the professional associations of members of the Armed Forces represented at the Committee of Personnel of the Armed Forces, who may have the right to speak but not to vote".* Thus, professional associations have been regularly participating in the Committee since March 2021, January 2023 being the most recent.
- Signing of agreements with other bodies or organisations. Since 2020 professional associations are invited to attend formal agreements signing ceremonies with other bodies or business organisations aimed at promoting internal promotion of rank and file soldiers, and seamen, and facilitate their return to civilian life.
- Military Life Observatory. This observatory is a collegial advisory and consultative body attached to the Spanish Parliament responsible for the continuous assessment of the military personnel status and how the interests of the members of the Armed Forces are safeguarded by the State (Article 53(1) of Organic Law 9/2011). Professional military associations are occasionally invited to provide their views on military status.

- *Legal standing to appeal to defend the collective professional interests of members of the Armed Forces*

45. As explained in detail in the attached report of the Ministry of Defence, jurisprudence has recognised professional association's right to challenge acts and provisions when deemed necessary to defend members' collective interests.

46. A case in point is Judgement of 12 June 2012 of the Third Chamber (Administrative Disputes Division) of the Supreme Court ruling on an action brought by the United Association of Spanish Military (AUME) against Royal Decree 684/2010 of 20 May adopting the Regulation on Military Honours that is contained in the attached report together with many other judgements. The Supreme Court ruled that the claimant military association may:

> *"legitimately defend, using all lawful means at its disposal, the fundamental, professional or social rights of the members of the Armed Forces considered violated by rules or acts of the Public Administrations, as in this case, in which this action was brought against Royal Decree 684/2010 of 20 May adopting the Regulation on Military Honours.*
>
> *If this is so, it is clear that specific questions of the Royal Decree that might affect the rights of the members of the Armed Forces may be challenged, for instance, the right to freedom of religion which, according to them, infringed Additional Provision Four of Royal Decree" (Legal basis 2)."*

47. It is in this spirit that Judgement of 27 April 2017 was ruled by the Third Chamber of the Supreme Court in which the requests of the Non-Commissioned Officers Professional Association of the Armed Forces (ASFASPRO) were granted and the legitimacy to challenge Royal Decree 924/2015 of 16 October adopting the Statute of the Housing, Infrastructure and Equipment Defence Agency autonomous body was not even called into question.

➢ *Other Guarantees*

48**.** Finally, and without seeking to be exhaustive, Organic Law 9/2011 also provides further guarantees that have to be mentioned.

49. On the one hand, the aforementioned Organic Law establishes the Military Life Observatory (Article 53 et seq.), a collegial advisory and consultative body attached to the Spanish Parliament that conducts a continuous assessment of the military personnel status and how the interests of the members of the Armed Forces are safeguarded by the State. Members are elected by the Congress (5 members) and the Senate (4 members) by absolute majority.

50. Its functions include:

a) Carry out assessments and proposals for actions on the exercise of fundamental rights and civil liberties by the members of the Armed Forces.

b) Produce reports and studies, at its own initiative or at the request of a party, on personnel scheme and living conditions in the Armed Forces.

c) Propose measures to reconcile work, private and family life of military personnel.

d) Promote adaptation of the military personnel scheme to changes in society and civil service.

51. On the other hand, and to conclude on this topic, Article 39 of Organic Law 9/2011states that “the suspension or dissolution of professional associations of members of the Armed Forces shall be subject to the rules governing the right to associate”.

c) Regulations relating to the Civil Guard

52. The Civil Guard is an "armed institute of a military nature" which, as such, is excluded from the scope of freedom of association provided for in Art. 28 of the

Spanish Constitution and the Organic Law on Freedom of Association that develops it.

53. According to Organic Law 2/1986, of March 13, 1986, on Security Forces and Corps[11] (Spanish acronym: LOFCS), respecting its original military organization and nature, it has been included within the State Security Forces and Corps, together with the National Police Corps (Spanish acronym: CNP), with a double dependence on the Ministers of Defence and Interior. Specifically, art. 9.b) of the aforementioned Law reads as follows:

> *"The Civil Guard, which is an armed institute of a military nature, under the authority of the Minister of the Interior in the performance of the duties attributed to it by this Law, and of the Minister of Defence in the performance of the missions of a military character entrusted to it by the latter or by the Government. In time of war and during a state of siege, it will be under the sole responsibility of the Minister of Defence."*

54. Likewise, underlining said nature of military armed institute, with dual dependence on the Ministry of the Interior and the Ministry of Defence, Arts. 13 and 14 of the LOFCS provide that:

"Article Thirteen.

> *1. The Civil Guard Corps is structured hierarchically according to the different jobs, in accordance with its military nature.*
>
> *2. The statutory regime of the Civil Guard shall be that established in this Law, in the rules that develop it and in the military order.*

Article Fourteen.

> *1. The Ministry of the Interior shall provide for all matters concerning Civil Guard services related to public safety and other competencies attributed by this Law, as well as their salaries, assignments, barracks and material.*

[11] https://www.boe.es/eli/es/lo/1986/03/13/2/con

2. The Ministers of Defence and of the Interior shall jointly decide all matters relating to the selection, training, improvement, armament and territorial deployment, and shall propose to the Government the appointment of the head of the Directorate-General of the Civil Guard, as well as the regulations governing the special volunteer service for the provision of military service in the Civil Guard.

3. The Minister of Defence shall make provisions concerning the system of promotions and status of personnel, as well as missions of a military nature entrusted to the Civil Guard, exercising, with respect to special volunteers for military service in it, the powers corresponding to him by law".

55. As pointed out in the attached report of the Ministry of the Interior (to whose exposition on the nature and regulation of the Civil Guard we refer), the configuration of the Civil Guard in accordance with military organization and principles, is given, apart from historical reasons, by the scope of its priority territorial action, which even includes the territorial sea, outside the large population centers with the consequent dispersion of its personnel throughout the national territory, in small units, as is clear from Article 11. 2 of the LOFCS, seeking to strengthen its discipline and efficiency, the latter, beyond any doubt.

56. Due to the essential nature of their duties in the maintenance of public order, the LOFCS in its Art. 5, imposes full dedication to all Security Forces and Corps, including the Civil Guard:

"They shall perform their tasks with total dedication, and shall always intervene at any time and place, whether or not they are on duty, in defence of the Law and public safety."

57. In accordance with these provisions, and seeking the proper balance between the fundamental rights of the members of the Civil Guard and its nature and duties as an armed institute of a military nature, the Spanish legislator approved

Organic Law 11/2007, of October 22, 2007, regulating the rights and duties of the members of the Civil Guard[12] (hereinafter "LODDGC").

58. Article 2 of this Law is based on a broad recognition of the rights of the members of the Civil Guard:

> *"Civil Guards are holders of the fundamental rights and public freedoms recognized in the Constitution, with no other limits on their exercise than those established in the Constitution, in the provisions that develop it and in this Organic Law."*

59. And although, with regard to freedom of association, it is based on a prohibition of the right to organize and its manifestations, as provided for in the Organic Law 11/1985 of August 2, 1985 on Freedom of Association, and in Article 15. 2 of the LOFCS and in Articles 8, 9, 11, 12, 18, and other coinciding articles of the LODDGC; however, the LODDGC recognizes and allows professional associations and establishes a body for consultation between them and a body for administration (the Council of the Civil Guard), which alleviates to a large extent the prohibition to organize, without detriment to the organization and military discipline, and ensuring the regular functions that the law attributes to the Corps, i.e. public safety in a democratic state.

60. Since the functions and duties of the Council of the Civil Guard are to be examined in the context of the complaint regarding Art. 6 of the Revised European Social Charter (RESC), we will now analyze the regulation of professional associations effectively recognized to the Civil Guard in accordance with the LODDGC.

i. Creation, composition and functioning.

61. The rules on the creation and composition of the provisional associations of Civil Guards can be summarized as follows: (a) Civil Guards may join the

[12] https://www.boe.es/eli/es/lo/2007/10/22/11/con

professional associations provided for in the Law, constituted only by members of the Civil Guard Corps, for the protection of their professional, economic and social interests; b) as a consequence of the principle of the duty of union neutrality, association with other union organizations is not allowed, but the professional associations of the military are allowed to form confederations, and to join international organizations of the same nature; c) their creation is free (only their duty to be entered in a register established for this purpose is provided for, such registration being a regulated act aimed only at verifying whether they meet the legal requirements) and its operation is governed by the rules established by the associates in their statutes.

62. The following rules of the LODDGC are set out below for this purpose:

"Article 9. Right of association.

> *1. Civil Guards have the right to associate freely and to form associations, in accordance with the provisions of Articles 22 and 104.2 of the Constitution and this Organic Law, for the defence and promotion of their professional, economic and social rights and interests.*
>
> *2. Civil Guard associations that do not have professional purposes shall be governed by the provisions of this article and by the general rules governing the right of association.*
>
> *3. Civil Guard associations created for professional purposes shall be regulated in accordance with the provisions of this Law, with the general rules governing the right of association being of supplementary application.*
>
> *4. Civil Guards who are members of an association have the right to actively participate in the achievement of the purposes of the association, with no limitations other than those established in this Law.*
>
> *5. Civil Guard associations shall not engage in political or trade union activities, nor be part of political parties or trade unions.*

Article 36. Scope, duration and purpose of the association.

> *The professional associations of Civil Guards shall have a state scope, shall be constituted for an indefinite period of time and shall have as their main purpose*

to meet the social, economic and professional interests of their associates and to carry out social activities that favor efficiency in the exercise of the profession and the professional ethics of their members.

In no case shall these professional associations be of a lucrative nature.

Article 39. Composition.

In order to be able to join professional associations, the members of the Civil Guard Corps must be in any administrative situation in which, in accordance with the regulations governing the regime of such personnel, they retain rights and obligations inherent to their status as Civil Guards.

With the limitations established in this Law, Civil Guards who belong to one of these associations, may, after their retirement, remain associated to the same, provided that the corresponding statutes allow it.

2. Members of the Civil Guard Corps may only join professional associations formed exclusively by members of the Corps itself. Said associations may not join other associations which, in turn, are not made up exclusively of members of the aforementioned Corps. However, they may be part of international organizations of the same nature.

3. The students of educational centers of the Civil Guard who do not have the status of Civil Guards may not become members of the assocation.

4. Membership of a professional association shall be limited to one professional association.

Article 48. Incorporation and Registration of the Professional Association.

1. The professional associations of Civil Guards shall be validly constituted as soon as they are registered in the Register of Professional Associations set up for this purpose at the Ministry of the Interior.

2. Registration shall be effected at the request of any of the promoters, and shall be accompanied by the text of the statutes and the founding act, indicating which of said promoters act as representatives.

3. Registration may only be refused when the composition of the association does not comply with the provisions of Article 39 or when the statutes do not meet the requirements set forth in this Organic Law or in the other cases provided for in the rules governing the right of association in general.

4. The term for registration in the Register of Professional Associations set up for this purpose at the Ministry of the Interior shall be three months from the receipt of the application at the competent body. Once this period has elapsed without an express resolution having been notified, the application for registration shall be deemed to have been accepted.

5. When formal errors are detected in the application or in the documentation that accompanies it, the term to proceed to the inscription will be suspended and the corresponding one will be opened for the correction of the detected defects.

Article 49. Statutes.

The statutes shall contain the following:

a) The name.

b) The address and the area of action where the activities will be developed.

c) The purposes and activities of the association precisely detailed.

d) The requirements and possible forms to join the association or leave it, the sanctions and removal of its members and, if applicable, types thereof. The consequences of the non-payment of assessed contributions by members may also be included.

e) The rights and obligations of the members and, if applicable, the different types of membership.

f) The rules assuring the democratic functioning of the association.

g) <u>The governing and representative bodies</u>, their composition, rules and procedures to appoint and replace their members, their responsibilities, term of office, causes for termination, form of deliberation, adoption and implementation of agreements, and the persons or positions to certify them, as well as the requirements for the said bodies to validly constitute the aforementioned bodies, and the number of members required to convene meetings or to propose items to be included in the agenda.

h) The rules governing the administration, accounting and document management, as well as the end of the association's financial period.

i) The initial assets and the available economic resources.

j) The reasons for the dissolution of the association and allocation of the assets, in such a case, while preserving its non–profit nature. "

ii. Attributions, means and guarantees.

- *<u>Rights</u>*

63. In defence of the interests of the associates, the Law recognizes a series of rights to the professional associations of Civil Guards, which are also extended in the case of having the character of representative associations. For these purposes, the LODDGC provides:

"Article 38. Rights of Associations.

1. Legally constituted professional associations shall have the right to make proposals and address requests related to their purposes to the competent authorities in the terms determined by regulation.

2. Professional associations may advise and provide support and assistance to their associates, as well as legitimately represent them before the competent bodies of the Public Administrations in matters that affect the professional field of the Civil Guard, except in those cases in which said representation is excluded.

3. Professional associations of Civil Guards may promote candidacies for the election of members of the Council of the Civil Guard and any other participatory or representative bodies that are established, as well as for the election of members of the representative, government and management bodies of the mutualities, associations and other social welfare and assistance entities

officially constituted by members of the Civil Guard, where their specific regulations so provide.

Article 44. Rights of the representative professional associations.

1. Representative professional associations shall be informed and consulted in the process of drafting regulatory projects affecting the professional conditions of the members of the Institution.

2. Likewise, they shall participate, where appropriate, in the working groups or commissions set up for the treatment of professional aspects.

3. They may also make proposals, submit reports, address requests and make complaints to the competent authorities.

Article 45. Rights of the representatives of the representative professional associations.

1. The access of the members of the associations that are part of the Council of the Civil Guard and a representative designated by the representative professional associations that are not part of said Council, to the barracks and facilities to participate in activities proper to professional associations, which, in any case, shall require prior notification to the head of the unit, center or body, and without such activities disrupting or adversely affecting the normal operation of services, shall be regulated by regulation.

2. Likewise, the right of the representatives of the associations that have members in the Council of the Civil Guard to have time, monthly hours and permits for the development of activities related to their condition shall be regulated by regulation."

64. These rights are developed and reinforced by Royal Decree 175/2022[13], of March 4, which develops the rights of the professional associations of Civil Guards, their representatives and the members of the Council of the Civil Guard elected in

[13] https://www.boe.es/eli/es/rd/2022/03/04/175

representation of the members of the Corps, which details the content, among other issues, of:

- The right to submit proposals and address requests related to the purposes of the associations referred to in Article 36 of Organic Law 11/2007, of October 22, 2007, to the competent authorities (Art. 3).

- The right to be informed and consulted on regulatory projects.

- It also provides that the associations shall participate, where appropriate, through their representatives, in the commissions or working groups set up to deal with the professional aspects of the members of the Civil Guard (Art. 8).

- It also states that the representatives of these associations shall have the right to be provided with the information they need to carry out their functions at the meetings provided for in Articles 7 and 8, as developed in Article 9.

- Likewise, Article 10 provides that the representative associations, through their representatives, may make proposals, submit reports, address requests and make complaints to the competent authorities, which are related to the purposes of the associations referred to in Article 36 of Organic Law 11/2007, of October 22.

65. In turn, such rights are also developed by Order INT/656/2023[14], of June 19, which develops Royal Decree 175/2022, of March 4, which develops the rights of the professional associations of Civil Guards, their representatives and the members of the Council of the Civil Guard elected in representation of the members of the Corps.

➢ *Means, premises and aid.*

66. The LODDGC not only contemplates such attributions of the professional associations but also establishes a series of mechanisms to favor the effective

[14] https://www.boe.es/eli/es/o/2023/06/19/int656/con

exercise of their functions, in defence of the professional interests of the Civil Guards, being at this point subject to development by Royal Decree 175/2022, of March 4, which develops the rights of the professional associations of Civil Guards, of their representatives and of the members of the Council of the Civil Guard elected in representation of the members of the Corps. Noteworthy is the obligation imposed on the Ministry to enable the dissemination of notices and communications of the professional associations and the duty to provide premises for the meetings that the associations wish to hold.

67. Regarding the provision of premises and means to communicate with Civil Guards in favour of professional associations, the LODDGC states:

"Article 46. Facilities for associations.

Suitable places shall be provided in all units, centres or bodies for the display of noticers or communications from professional associations.

Article 47. Other rights.

1. Professional associations of Civil Guards shall have the right to convene and hold meetings in official centres of the Civil Guard as part of the exercise of the right of professional association. These meetings shall be held outside working hours and without disturbing the functioning of the services, prior request to the head of the unit, centre or body, who may refuse it, if considering that the service may be affected.

2. To convene the meeting, the authorization shall be requested in writing, at least seventy-two hours in advance, and shall state the date, time and place of the meeting, and the details of the signatories accrediting that they represent the association, in accordance with its statutes.

If the competent authority has not objected to the meeting by express resolution within twenty-four hours before the date of the meeting, the meeting may be held without any further requirement.

The conveners of the meeting shall be responsible for its normal development."

68. And in development of the above, Royal Decree 175/2022, of March 4, which develops the rights of the professional associations of Civil Guards, their representatives and the members of the Council of the Civil Guard elected in representation of the members of the Corps, specifies the following:

Article 5. Right to display notices or communications in spaces provided for that purpose.

Adequate space shall be provided in all units, centres and agencies of the Corps for the display of notices or communications from professional associations relating to their functions.

These spaces shall be located, after consultation with the user professional associations, in the usual transit areas of the personnel assigned to them.

2. The Directorate-General of the Civil Guard shall promote electronic or telematic spaces for the same purpose.

3. The propaganda and electoral campaign activities shall be governed by the provisions of the regulations governing the electoral regime of the Council of the Civil Guard.

Article 6. Right to convene and hold meetings in official centers of the Civil Guard.

1. The professional associations of Civil Guards shall have the right to convene and hold meetings in official centers of the Civil Guard.

2. For the effective exercise of this right, these meetings shall meet the following requirements:

a) Be addressed to Civil Guard personnel.

b) Have an informative purpose, about the activities of the association, or educational with respect to the functions of the Corps.

c) Be held outside working hours and without disturbing the functioning of the services.

d) Their holding shall require prior request to the head of the unit, center or organ, who may refuse it, when he/she considers that the service may be affected.

3. To convene the meeting, the authorization shall be requested in writing, at least seventy-two hours in advance, and shall state the date, time and place of the meeting, and the details of the signatories accrediting that they represent the association, in accordance with its statutes.

If the competent authority has not objected to the meeting by express resolution within twenty-four hours before the date of the meeting, the meeting may be held without any further requirement.

4. The conveners of the meeting shall be responsible for its normal development.

5. The training activities that are developed will not have an official character nor will they be considered to be convened or promoted by the Civil Guard.

Persons from outside the Corps may participate as speakers and members of other Security Forces and Corps may be invited to attend.

6. Access to the center for participants shall be in accordance with the security rules of the center.

7.Authorisation for such meetings may only be refused if they affect the provision of the service, disrupt the working conditions of other staff, or if no suitable venue is available.

69. The LODDGC also foresees the financial means with which professional associations may operate, providing that they may be supported with public funds.

"Article 37. Economic regime.

5. Professional associations may be financed by membership fees or other financial resources provided for in their statutes.

Under no circumstances may they receive private donations.

2. The receipt, of public subsidies, if any, shall be charged to the General State Budget.

3. The economic regime of professional associations shall be subject to the principles of transparency and publicity."

70. In accordance with said provision, Order INT/1715/2013[15] of 18 September was approved, regulating the granting of subsidies to the professional associations of Civil Guards. Said Order provides in its Art. 1 that *"The Ministry of the Interior shall subsidize the professional associations of Civil Guards with the purpose of facilitating the organization and general functioning of the same, of encouraging the greater dynamism of each association in the development of its main activity, of promoting the realization of training activities and professional study on issues of interest to the Civil Guard and the publication of content of professional interest." And specifically Art. 4 provides for the call for grants on an annual basis.*

71. For instance, the last annual call for applications was made by the Resolution of 23 May 2023, calling for grants to professional associations of Civil Guards for the year 2023, an extract of which is published in the Official State Gazette of 25 May[16]: These grants are for a maximum amount of 237, 300 euros, to be distributed among the applicant associations, with 142,380 euros corresponding to the modality of contributing to the organization and operation expenses of the associations, 47,460 euros to the modality that aims to promote activities of interest for the exercise of the functions of the Civil Guard and the associative life, and 47,460 euros to the modality derived from the degree of representativeness in the Council of the Civil Guard.

[15] https://www.boe.es/eli/es/o/2013/09/18/int1715/con
[16] https://www.boe.es/diario_boe/txt.php?id=BOE-B-2023-15595

72. In any case, the attached report from the Ministry of the Interior, as Annex III, details the subsidies received by the professional associations in the last five years.

- *Institutional representation.*

73. One of the fundamental attributions of the professional associations of the military to defend the professional interests of their members is the right to participate, as long as they meet certain requirements of representativeness, in the Council of the Civil Guard, regulated in Art. 52 and following of the LODDGC.

74. Since this issue is especially relevant to answer the complaints about the violation of Art. 6, we refer to what will be said later.

75. However, the functions of institutional representation of professional associations do not end here; other regulations also expressly provide for their participation in other bodies or forums for the defence of their interests. Specifically, Art. 44 of the LODDGC provides that "they shall participate, where appropriate, in the working groups or commissions set up for the treatment of professional aspects". Royal Decree 175/2022, of March 4, which develops the rights of the professional associations of civil guards, extends it also to the "working groups for the study of these regulatory projects" (Art. 7.2).

- *Legal standing to appeal in defence of the collective professional interests of the members of the Armed Forces.*

76. In similar terms to what we have seen for the professional associations of the military, case law has recognised the standing of the professional associations of Civil Guards to challenge acts and provisions when they consider it appropriate to do so in defence of the collective interests of their members.

77. Rulings such as that of February 3, 2022 of the Third Chamber of the Contentious-Administrative of the Supreme Court (rec. 382/2020[17], filed by the Association of the Scale of Non-Commissioned Officers of the Professional Civil Guard against Royal Decree 935/2020, of October 27, approving the Regulation on general guidelines for the curricula of training education for incorporation into the scales of Non-Commissioned Officers and Corporals and Guardsmen of the Civil Guard Corps), or that of September 27, 2022 of the same Chamber (rec. 4733/2020[18] which partially upholds the appeal of the Unified Association of Civil Guards against the Communicated Order of June 29, 2018, on the service and incentives regime for special services in the offshore vessels of the Civil Guard.) admit, without questioning, such legitimacy.

5. Application to the specific case

a) Restrictions on collective bargaining and collective conflicts comply with the requirements of the RESC, particularly Art. G.

78. Without prejudice to the fact that the lack of specificity and proof of the allegations in the complaint should, *per se*, determine the rejection of the complaint, we must point out that the restrictions that Spanish law establishes in relation to the right to collective bargaining and strike with respect to members of the Armed Forces and the Civil Guard scrupulously comply with the provisions of Article G ("Restrictions") of the Revised European Social Charter.

79. This is so because, as will be analysed below, the Spanish democratic legislature has indeed complied with the three requirements imposed by this article.

[17] https://www.poderjudicial.es/search/AN/openDocument/b36b3173894bf6ee/20220214
[18] https://www.poderjudicial.es/search/AN/openDocument/020b2b99720c4f9ba0a8778d75e36f0d/20220930

80. As a warning, and in order to avoid repetition, when addressing the requirements of the legal provision and the legitimate aim, we will refer jointly to both the restrictions of the rights of Art. 5 and Art. 6 (which, on the other hand, EUROMIL does not question). As far as proportionality is concerned, in this section we will focus specifically on the restrictions of Art. 5, without prejudice to the specific observations we will make with respect to Art. 6 of the RESC.

i. Legal provision

81. With respect to the first criterion, relating to the foreseeability and predictability in the Law of the restriction in question, this is clearly fulfilled in the present case; we have already seen that the restrictions are based on express provisions of Article 28.1 of the Spanish Constitution -which defers to the law the possibility of limiting or exempting the exercise of this right to the Armed Forces or Institutes and other Bodies subject to military discipline-, in conjunction with the provisions of Article 1.3 of Organic Law 11/1985, August 2, 1985, on Freedom of Association (LOLS), Articles 6.8 and 15.2 of the Spanish Constitution, Articles 6.8 and 15.2 of the Spanish Constitution, Articles 6.1 and 15.2 of the Spanish Constitution. of Organic Law 11/1985, of August 2, 1985, on Trade Union Freedom (LOLS), Articles six.8 and fifteen.2 of Organic Law 2/1984, of August 2, 1985, and Articles six.8 and fifteen.2 of Organic Law 2/1984, of August 2, 1985. of Organic Law 2/1986, of March 13, 1986, on Security Forces and Corps (LOFCS), Articles 11 and 12 of Organic Law 11/2007, of October 22, 2007, regulating the rights and duties of the members of the Civil Guard (LODDGC), and 7.2 of Organic Law 9/2011, of July 27, 2011, on the rights and duties of the members of the Armed Forces (LODDFAS).

82. This leads to the conclusion that the restrictions in this matter have a legal basis and an adequate regulatory rank that provides them with sufficient coverage within the framework of our internal system, and that the provisions

contained therein are sufficiently clear and detailed for the groups affected to foresee the consequences derived therefrom.

83. The complaint does not question the existence of a legal provision, so we must consider that the requirement set forth in letter G of the RESC is fulfilled.

ii. Legitimate purpose

84. Article G of the Revised European Social Charter allows a plurality of legitimate purposes under which restrictions to the rights recognised therein would be valid, namely those necessary: "for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals."

85. As the reports of the Ministry of Defence and the Ministry of the Interior explain, restrictions on collective bargaining and the adoption of collective conflict measures result, on one hand, from the important powers conferred to the Armed Forces and the Armed Institute of the Civil Guard. On the other hand, in order to enable their proper functioning, such restrictions help ensure hierarchy, discipline, obedience and unity, which are indispensable to any military organisation in the fulfilment of its purposes. Purposes which, in any case, are necessary for the protection of public interest, national security, public health and the protection of the rights and freedoms of others. Furthermore, the legislation always takes into account the need to maintain political and trade union neutrality in order to ensure the appropriate exercise of those powers and their full submission to the Constitution.

86. It should be noted that said purposes, pursued by the restrictions foreseen in Article 28 of the Spanish Constitution and the legislation implementing it, are in line with those provided for in the Treaty, as is clear from the reasoning of the European Court of Human Rights in the case of Junta Rectora del Ertzainen Nazional Elkartasuna (Er.N.E.) v. Spain, no. 45892/09:

"36. On the other hand, the ECHR admits that the interference in issue had pursued the legitimate aim of Article 11(2), which is preventing disorder, in view of the specific duties assigned to this Police Force and the potential consequences of interruption of its activities."

87. Although the above-mentioned judgment refers to a police force, and not to the Armed Forces or the Armed Institute of the Civil Guard, mutatis mutandis it may be applied equally to the Civil Guard, which is also one of the Spanish Law Enforcement Agencies (and an armed institute), and the Armed Forces.

88. It should be noted that the specific tasks allocated to the armed forces and institutes pursue legitimate purposes for the restrictions of these rights (both the right of association, and the right to collective bargaining and collective conflict), as is clear from the following legal provisions:

89. First, the relevant international texts expressly provide for the possible existence of limitations on the exercise of these rights by members of the Armed Forces, namely:

- Article 11(2) of the European Convention on Human Rights makes clear that: "This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State".

- Article 5 of the Revised European Social Charter, as noted above, refers specifically to Armed Forces, and the application will be determined by "National laws and regulations".

- Finally, although Article 6 of the RESC does not lay down any similar express provision related to the right of collective bargaining and the adoption of collective conflict measures, the specific treaty of the International Labour Organisation, C098 - Right to Organise and Collective Bargaining Convention, provides in its Article 5 that: "The extent to which the guarantees provided for in this Convention shall

apply to the armed forces and the police shall be determined by national laws or regulations".

90. In short, by signing these International Treaties, States accept that, due to the specific functions and modus operandi of the Armed Forces, the restrictions upon the rights recognized in them for members of the Armed Forces and armed institutes should be based on legitimate purposes, without prejudice to the requirements of legal provision and proportionality, where appropriate.

91. In addition, it is clear from a comparative legal analysis that there is a general agreement among different European States on the existence of a legitimate basis for introducing restrictions to these rights.

92. Furthermore, following a comparative legal analysis, the attached report of the Ministry of Defence (see section 3) concludes the following:

> "*Their constitutional provisions or secondary legislation provide for restrictions or even a blanket ban on the right of personnel with military status to form or join a trade union, in particular on the most relevant manifestations of trade union action (right to strike, collective action or collective bargaining).*
>
> *In any case, all the legal systems analysed unanimously indicate that the military personnel should be precluded from exercising the right to strike, or professional associations of members of the Armed Forces from adopting such measures of collective conflict.*
>
> *It should also be noted that, even in cases where there is a model of professional associationism similar to the Spanish one, the legislation severely limits the scope of action of these forces. For example, it excludes their activities or participation in matters related to the military's status, training, operations, the logistic-operational field, hierarchical and*

functional subordination and the employment conditions of the personnel in service.

Thus, it is possible to identify in the legal systems of the Member States of the Council of Europe a general agreement, endorsed by the national legal system in force of each nation, which is indicative of a consensus generalis regarding the existence of restrictions on the trade union rights of military personnel. Such restrictions would be on the manifestations of trade union freedom that may have an impact on the adequate structure of the Armed Forces in order to exercise their constitutional roles As stated above, it is clear in the case of those that may have, among others, the following effects: to exert pressure on commanders, or the authorities and constitutional bodies by civil servants monopolising the use of arms; to pose a real threat to the discipline and internal cohesion of the Armed Forces; or, in short, a threat to the very operability of the Armed Forces, as would be the case if the right to strike or other measures of collective conflict or collective bargaining in its broadest sense could be exercised.

93. Section VIII of the attached report of the Ministry of the Interior also analyses the European police forces with the same status as the Civil Guard, which are included in the International Association of Gendarmeries and Police Forces with Military Status. This comparative legal analysis resulted in the general rule of restrictions on the right to organise in this area.

94. In this respect, following also a comparative legal analysis, the OSCE report on this question shows that there are "two distinct concerns - discipline and outside influence" underlying this type of restrictions, which determines that: “In order to address these concerns in countries where they are permitted, military associations and unions commonly work under two constraints. The first is that they may be limited to members of the armed forces, in order to counter the concern of outside influence, and will not be linked to other trade unions. Second, legal barriers may

be imposed that forbid strikes or other forms of collective action that could disrupt operations or threaten security"[19]

95. In short, the requirement to ensure the proper functioning of the military forces, free from external interference, for the fulfilment of the important tasks necessary to maintain public order and security is a legitimate purpose under which restrictions to the rights recognised in Articles 5 and 6 of the RESC would be valid.

96. Finally, the fact that the complainant Association does not question the existence of such legitimate purposes, but only, at most, their proportionality, means that this requirement of Article G of the RESC should also be understood to be met.

iii. Proportionality

97. As mentioned above, the complaint states that the Spanish legislation is not consistent with the principle of proportionality, not because of the content of the legislation on military or Civil Guard professional associations (which it does not question), but because of an alleged deficient practical implementation ("have not been implemented into practice"). The complaint, however, does not specifically explain nor provide any evidence of the practical implementation it questions.

98. The following factors show that, on the contrary, any restriction on the right to organise for military and Civil Guard personnel complies with the principle of proportionality.

[19] *Human Rights of Armed Forces Personnel: Standards, Good Practices and Recommendations*, https://www.osce.org/files/f/documents/6/5/480143_1.pdf . Pages 108 and 109.

99. First, this is not a case of a blanket ban on the right of military and Civil Guard personnel to organise collectively in order to defend their rights. As previously stated, this right is already accepted and there is no doubt that they may organise for this purpose, albeit not in "ordinary" trade unions, but in professional associations made up exclusively of military (or Civil Guard) personnel.

100. As the above-mentioned OSCE report points out, this is a solution commonly implemented in European countries:

> *"In order to address these concerns in countries where they are permitted, military associations and unions commonly work under two constraints. The first is that they may be limited to members of the armed forces, in order to counter the concern of outside influence, and will not be linked to other trade unions. Second, legal barriers may be imposed that forbid strikes or other forms of collective action that could disrupt operations or threaten security."*[20]

101. This system aims to align the legitimate rights of the military/civil guards with the requirements they are subject to: political neutrality, proper preservation of the tasks entrusted to them and safeguarding of general interests. This system that has been accepted both by:

- the Committee to which we are addressing this document, specifically in European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, decision on the merits of 22 May 2002, §35: "*The Committee recalls that Article 5 of the Charter allows national legislation to require that professional police associations be composed exclusively of members of the police force*"; and

[20] *Human Rights of Armed Forces Personnel: Standards, Good Practices and Recommendations*, https://www.osce.org/files/f/documents/6/5/480143_1.pdf . *Ibid*

- the Committee of Ministers of the Council of Europe. Following the judgment issued by the ECtHR on the case of Matelly vs France, no. 10609/10, a new law was passed in France in 2015[21] on the right of professional association, which exempts military personnel from the right to unionise and to strike. French soldiers may therefore create and join Professional Military Associations (also known under the French acronym APNM)[22]. The existence of professional groups of trade union nature, except the aforementioned APNMs, the affiliation to such groups during active service and the right to strike remain prohibited for military personnel. This system was expressly validated by the Committee of Ministers, which considered the operative part of the aforementioned judgement of the Court to have been duly executed, and declared the case closed by Resolution of 19 April 2017[23]

102.In similar terms, although it is true that such restrictions prohibit professional associations of military or civil guards from associating with an "ordinary" trade unions, this is compensated for, while respecting the principle of proportionality and preserving the legitimate purposes of restrictions, by allowing them to freely join together and associate with similar international associations (Article 34 of Organic Law 9/2011 and Article 39 of Organic Law on the duties and obligations of members of the Civil Guard). Their bargaining power is therefore increased.

[21] Law 2015-917 of 28 July 2015 updating the law of military planning for the years 2015 to 2019.
[22] APNM: Association Professionnelle Nationale des Militaires.
[23] https://hudoc.exec.coe.int/?i=004-39846 . The Final Resolution expressly stated that "selon cette nouvelle loi du 28 juillet 2015, le personnel militaire peut désormais créer et adhérer librement à une association professionnelle nationale et y exercer des responsabilités. Les règles détaillées de fonctionnement de ces associations ont été établies par des décrets en 2016. Leur création repose sur un système déclaratif et ne peut donc être soumise à un refus d'enregistrement sauf pour des raisons spécifiques par décision judiciaire. Dix associations professionnelles nationales de ce type ont été enregistrées jusqu'à présent."
["According to this new Act of 28 July 2015, military personnel can now freely create and join a national professional association and exercise responsibilities in it. These associations' detailed rules of functioning were established by decrees in 2016. Their creation is based on a declarative system and can therefore not be subjected to a refusal of registration unless for specific reasons by judicial decision. Ten such national professional associations were registered so far."]

103.The complaint seems to question only the practice, not the content of the legislation, related to the actions of the associations, as they may not carry out "an active and effective defence of the legitimate rights and interests of the military in Spain."

104. With all due respect, professional associations are widely allowed, under the Spanish legislation and practice, to defend the rights (and professional interests) of their members effectively. Moreover, the requirements generally demanded by the Committee for the fulfilment of the right to organise in Article 5 are largely met, as they share the following requirements of the Committee related to workers' organisations:

- Associations are freely formed, without any other condition except that they should be recorded in a Register (subject to specific rules). They are freely governed as well, and they may only be dissolved in the manner provided by the law and pursuant to a decision of a court.

- The right to express their demands freely is recognised and specifically the right to submit proposals, make reports and address requests and suggestions related to their purposes (Article 40 of Organic Law 9/2011, Article 36 of Organic Law 11/2007 and Article 3 of Royal Decree 175/2022 of 4 March).

- They may gather and disseminate information of their associates and military personnel. And not only is this right recognised, but also *promoted* through the duty imposed by the legislator on the Ministries to provide communication channels and premises for them.

- They enjoy the right of access to workplaces and meet with their associates, with no limitations other than the meetings should be held outside working hours.

- They may bring actions before the Courts in defence of the collective interests of the military and civil guards, as has already been seen, and with

the possibility that the Courts will uphold them. In fact, they have already held them.

105. Related to this issue, the complaint refers to the alleged existence of "discrimination" against them in terms of access to the Courts, without providing any clarification as to what such discrimination consists of. However, the following should be noted:

- There is no discrimination whatsoever in terms of access to judicial protection for the military or civil guards with respect to other civil servants. This issue will be further addressed at the end of this document.

- And, more specifically, the administrative Courts have expressly granted standing for professional associations to defend the interests they represent. In fact, examples have been given of cases where their actions were also upheld and the administrative activity they were challenging was invalidated.

106.They enjoy the freedom of expression that is generally recognised for military personnel (Article 12 Organic Law 9/2011) and for civil guards (Article 7 of Organic Law on the duties and obligations of members of the Civil Guard). This right is also expressly recognised for the representatives of associations represented in the Committee of Personnel of the Armed Forces (Article 51(a) of Organic Law 9/2011) and for representatives elected by suffrage in the Council of the Civil Guard (Article 57 of Organic Law on the duties and obligations of members of the Civil Guard and Article 8 of Royal Decree 785/2022).

107. On the other hand, it is true that these associations are not allowed to associate with "ordinary" trade unions, in line with the restriction on the Armed Forces and Civil Guard establishing that they may only form associations made up exclusively of members of these bodies (in order to ensure neutrality and non-interference from outside, which may affect the exercise of the functions of both) However, this restriction is compensated for, as they may associate with similar associations, expressly recognised by Organic Law 9/2011 and Organic Law on the

duties and obligations of members of the Civil Guard for them, or with similar international organisations (Article 34 of Organic Law 9/2011 and Article 39 of Organic Law on the duties and obligations of members of the Civil Guard), which also would allow them to increase their influence.

108. Finally, it should be noted that they may debate and present their interests to the Ministry through the Committee of Personal of the Armed Forces and the Council of the Civil Guard Council. This issue will be further addressed.

109. In short, restrictions on the right to organise trade unions imposed on members of the Armed Forces and the Civil Guard meet the requirements of legal provision and proportionality, as well as the principle of proportionality, on the basis of an associative regime that preserves many of those established by the Committee, regarding the right of workers to organise under Article 5 of the RESC, and allows for an effective defence of their legitimate professional rights.

C. Right to collective bargaining and the right to strike

1. Summary of the complaint

110. The complaint of the complaining entity can be summarized in the following statements:

> *"For what concerns **paragraphs 1 and 2, Article 6** has been violated on the grounds that Spain does not in any way promote joint consultations between the members of the Armed Forces and the Ministry of Defence, or between the Civil Guard members and the Ministries of Interior and Defence, as a public service employer, and does not promote any machinery for voluntary negotiations between trade unions representing the former - which are banned - and the latter, in order to regulate working conditions through collective agreements.*
>
> *The Organic Law 9/2011 on the rights and duties of members of the Armed Forces foresees that the right for military associations to be heard on the issues of the professional, remuneration and social status of their members takes place in the Committee of Personnel of the Armed Forces, before which they may present proposals or suggestions (see supra). For the Civil Guard, the Organic Law 11/2007 on the rights and duties of members of the Civil Guard defines that the*

right for professional associations to be heard on the abovementioned issues takes place in the Council of the Civil Guard (see supra).

However, ***EUROMIL highlights that this right is not currently respected in practice, and Spain is not promoting a fair and equal joint consultation between the workers on the one side, and the employer on the other side. For*** *the Armed Forces, social dialogue with the Ministry of Defence is absent: professional associations are not consulted, and the opinions presented to the Committee of Personnel are formally heard - as required by the law - but systematically not considered.* ***The foregoing situation equally applies to the Civil Guard. Social dialogue with the Ministries of Interior and Defence is absent, as professional associations of the Civil Guard are not consulted, and the presented opinions are in general not taken-into account.***

is therefore submitted that the legislation and practice in Spain fail to ensure that military associations are provided with means to effectively negotiate the terms and conditions of employment of the members of the Armed Forces and Civil Guard and make collective binding agreements with the employer on their behalf. Consequently, EUROMIL maintains that the prohibition of trade union rights for military personnel in Spain is neither necessary nor appropriate within the meaning of Article G and gives rise accordingly to a violation of paragraphs 1 and 2 of Article 6 of the ESC .

As regards ***paragraph 4 of Article 6 of the ESC****, EUROMIL argues that the prohibition against the right to strike of military representatives of associations amounts to a violation of the right to collective action under Article 6 .*

EUROMIL argues that an absolute prohibition cannot be justified either by the requirements of military discipline or by the public nature of the service. Nevertheless, as the Committee notes, restrictions on the right to strike may be acceptable under specific circumstances and conditions (CGIL v, Italy N O 140/2016 5145), namely when social dialogue and the right of collective bargaining are sufficiently organised and effective . As this is not the case in Spain, EUROMIL considers that the prohibition of the right to strike prescribed in the Organic Law 9/2011 for the Armed Forces personnel, and in the Organic Law 11/2007 for the Civil Guard personnel, is not necessary in a democratic society and should thus be replaced by a partial prohibition".

2. Relevant international regulations

a) European Social Charter (ESC)

111. Article 6 – The right to bargain collectively .

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1 to promote joint consultation between workers and employers;

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

(…)

and recognise:

4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

112. On the other hand, applicable to the generality of the rights of the Charter, Article G of the same establishes the general regime of restrictions:

"Article G – Restrictions

1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed".

b) <u>Other relevant regulations</u>

113. We refer to what has been said on the occasion of art. 5 ESC

3. Relevant Committee doctrine

a) Promotion of peer consultations.

114. According to the Committee's interpretation, within the meaning of Article 6, paragraph 1, joint consultation is consultation between employees and employers or their representative organizations, on an equal footing, with a view to reaching agreement on all matters of mutual interest at all levels.

115. The Committee interprets article 6, paragraph 1, to mean that States parties should take positive measures to encourage consultation between trade unions and employers' organizations. If such consultation does not take place spontaneously, States parties should establish permanent bodies and arrangements in which trade unions and employers' organizations are represented on an equal and joint basis.

116. The consultation should cover all issues of mutual interest, and in particular: productivity, efficiency, health, safety and well-being at work, and other professional issues (working conditions, vocational training, etc.), economic problems (organization and management of the company, working hours, production rates, structures and number of personnel, etc.), and social issues (social security, social welfare, etc.)

b) the establishment of voluntary negotiation procedures between employers or employers' organizations, on the one hand, and workers' organizations

117. According to the Committee, in accordance with Article 6, paragraph 2, national legislation must recognize that workers' and employers' organizations can regulate their relations through collective agreements. If the spontaneous development of collective bargaining is not sufficient, positive measures must be taken to facilitate and encourage the conclusion of collective agreements.

118. The extent to which collective bargaining applies to public officials, including members of the police and armed forces, **may be determined by law**. However, staff members always retain the right to participate in any process directly relevant to the determination of the procedures applicable to them. A mere hearing of a party on a predetermined outcome will not satisfy the requirements of Article 6(2) of the Charter. On the contrary, it is mandatory to consult regularly with all parties throughout the process of setting terms and conditions of employment and thus provide for the possibility of influencing the outcome. Especially in a situation where trade union rights have been restricted, a trade union must maintain its ability to argue on behalf of its members through at least one effective mechanism. Moreover, to satisfy this requirement, the collective bargaining mechanism must be such that it actually offers the possibility of a negotiated outcome in favor of the workers' side.

c) Possibility of restriction ex. Art. G ESC.

119. As the Committee notes in European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, decision on the merits of 27 January 2016, §80, restrictions on the rights of members of the Armed Forces or equivalent, *"must also take Article G of the Charter into consideration, which provides that any restriction to the right to organise provided for under Article 5 of the Charter must be prescribed by law, pursue a legitimate purpose and [be] necessary in a democratic society for, inter alia, the protection of national security".*

120. With regard to the right to strike of public servants, the Committee recognizes that, under Article G of the Revised Charter, the right to strike of certain categories of public servants may be restricted, including members of the police and the armed forces, judges and senior public officials (European Organization of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113,).

4. Relevant Spanish regulations on the right of members of the Armed Forces and the Civil Guard to participation, consultation and collective agreement.

a) Spanish Constitution and general legislation on freedom of association.

121. At this point, we consider reproduced what was stated above when answering the complaints about the alleged violation of art. 5 ESC.

b) Regulations of the Armed Forces: Armed Forces Personnel Council.

122. The regulations that we have mentioned above on professional associations in the Armed Forces not only contemplate the defense of the collective interests of the military through these professional associations, but also promote their consultation for the defense of said interests, being an essential piece for the Committee of Personnel of the Armed Forces.

123. According the article 46 of the Organic Law 9/2011 on the rights and duties of members of the Armed Forces:

"Article 46. Scope of Action.

1. The participation of the professional associations of members of the Armed Forces and their interlocution with the Ministry of Defense shall take place in the Armed Forces Personnel Council, before which they may submit proposals or suggestions on matters related to their military status and condition, the exercise

of rights and freedoms, the personnel regime and the living and working conditions in the units.

2. Excluded from the scope of action of the Council are matters related to security and defense policy decisions, to the planning and development of military exercises or operations and the use of force."

124. Its legal regime is included in:

- In Chapter II (art. 46-51) of Organic Law 9/2011, of July 27, on the rights and duties of members of the Armed Forces.
- In Royal Decree 910/2012, of June 8, approving the Regulations of the Personnel Council of the Armed Forces (hereinafter COPERFAS Regulations).

i. Composition and operation.

125. Art. 48 of OL 9/2011:

"Article 48. Composition.

1. The Council shall be chaired by the Minister of Defense and, when he is not in attendance, by the Undersecretary of Defense. It shall be made up, in equal numbers on both sides, by the representatives of the professional associations of members of the Armed Forces who meet the requirements of paragraph 2 and by the representatives of the Ministry of Defense appointed for such purpose, among which shall be the Commanders or Chiefs of Staff of the Armies.

2. In order to have access to the Council, the associations must have, in relation to the members of the Armed Forces in the situations referred to in Article 34.1 of this law, a minimum of 1% of members, if their statutes are open to all the categories referred to in said article, 3% of the members of their category if the association is exclusively of officers or non-commissioned officers, and 1.5% in the case of associations of military troops and sailors. In the event that they include members of two categories, they must comply with these percentages in each of them. The percentages may be reduced by Royal Decree of the Council of Ministers in order to facilitate the adequate representativeness and functionality of the Council, and shall refer to the data made public by the Ministry of Defense at the end of each calendar year.

3. The term of office of the members of the professional associations, who shall be subject to the regime of incompatibilities by reason of the office to be

determined by regulation, shall be maintained until a new appointment is made by the governing bodies of each association".

126. As detailed in the Ministry of Defense report that we attach, the current composition of the body is established in Ministerial Order 07/2023, of March 1, which appoints the members of the Armed Forces Personnel Council ("Bulletin Official of the Ministry of Defense» No. 48, of March 9). APPENDIX I to the cited report.

127. Article 1.1 designates as representatives of the Ministry of Defense in the Armed Forces Personnel Council the people in charge of the following bodies:

a) Undersecretariat of Defense.

b) General Directorate of Personnel.

c) Army Personnel Command.

d) Navy Personnel Command.

e) Air and Space Army Personnel Command.

128. When the person in charge of the Undersecretariat of Defense acts as president of the Council, the head of the General Directorate of Recruitment and Military Education shall attend as representative of the Ministry of Defense in the Personnel Council of the Armed Forces.

129. On the other hand, by virtue of the agreement reached by the Council at its meeting of October 7, 2016, its membership would be enlarged if the number of associations represented on the Council were five. In this case, the meetings of the plenary session shall be attended not only by the representative of each professional association represented on the Council, but also by one of its alternates. On behalf of the Ministry of Defense, in addition to those already mentioned, will also be present the people in charge of the following bodies:

a) General Technical Secretariat.

b) General Directorate of Recruitment and Military Education.

c) Technical Cabinet of the Undersecretary of Defense.

d) General Sub-Directorate of Military Personnel.

e) Sub-Directorate General of Military Education.

130. When the person in charge of the Undersecretariat of Defense acts as president of the Council, the person in charge of the General Secretariat Manager of the Social Institute of the Armed Forces shall attend as representative of the Ministry of Defense in the Personnel Council of the Armed Forces.

131. Art. 50 of the OL 9/2011 establishes certain rules for its operation, providing that it shall operate in plenary session and by commissions. In addition, with respect to the frequency of its sessions, Article 50.3 requires that at least the ordinary sessions meet every three months:

> *"The sessions of the Personnel Council of the Armed Forces may be ordinary and extraordinary. The Council shall meet in ordinary session, to deal with matters within its competence, at least once every three months. The Council shall meet in extraordinary session when convened by its President, on his own initiative or at the request of the majority of the members representing the professional associations on the Council. The request shall be made in writing addressed to the President".*

132. For a detailed study of the operating rules, we refer to section 4.2.1 and 4.2.2 of the Report of the Ministry of Defense attached to these observations.

ii. Functions.

133. As the attached report of the Ministry of Defense points out, the aforementioned **body or Personnel Council** is not limited to being the venue for the participation of the professional associations of members of the Armed Forces and their dialogue with the Ministry of Defense, in matters related to the status and condition of military personnel, the exercise of rights and freedoms, the personnel regime and the living and working conditions in the units (art. 46.1 LODDFAS and art. 1 of the COPERFAS Regulations), **but it is also called upon to perform relevant "consultation" functions on matters affecting the status of military personnel**.

134. To this end, **COPERFAS performs three blocks of functions**:

- **Receive, analyze and evaluate proposals or suggestions** made by professional associations, regardless of whether or not they are represented on the Council [art. 49.1 a) LODDFAS].
- To **have knowledge and be heard** on the following matters: 1. Establishment or modification of the professional status and disciplinary regime of the Armed Forces; 2. ª Plans for training and improvement of teaching in the Armed Forces; 5.ª Leave, vacation and leave regime; 6.ª Supplementary social welfare plans; 7.ª Matters affecting other social, professional and economic aspects of the military [art. 49.1 b) LODDFAS].

- To report, on a mandatory basis and prior to their approval, the legal provisions and their regulatory developments **that are issued on the matters mentioned in the previous subsection [art. 49.1 c) LODDFAS].**

iii. Means and guarantees for its proper operation.

135. The aforementioned legislation is not limited to creating the Personnel Council, but also establishes a series of provisions to guarantee its effective and correct functioning. Among these provisions, we highlight the following:

- *Administrative support structure for the Armed Forces Personnel Council.*

136. Article 50.7 of the OL 9/2011 anticipates that "within the Undersecretariat of Defense there will be a permanent secretariat of the Council that will provide the necessary administrative support. Its officer shall act as secretary at Council meetings".

137. The first additional provision of the COPERFAS Regulations (Means of the Personnel Council of the Armed Forces) establishes that "[t]he Undersecretariat of Defense will provide the personal, material and budgetary means necessary for the operation of the Personnel Council of the Armed Forces, hereinafter the Personnel Council, without its implementation entailing an increase in public expenditure."

138. In accordance with the article 15.1 of the COPERFAS Regulations, "[t]he permanent secretary of the Personnel Council shall have military status and shall be appointed by resolution of the Undersecretary of Defense published in the «Official Gazette of the Ministry of Defense»".

139. The Permanent Secretary shall not have the status of a COPERFAS officer (art. 12.2 of the COPERFAS Regulations). On the other hand (and as detailed in the attached report of the Ministry of Defense), its functions are detailed in detail in art. 15.2.

140. In this way, and according to section 1.2 of the COPERFAS Permanent Secretariat Organization Book, under the command of the COPERFAS Permanent Secretary, the COPERFAS Permanent Secretariat, under the Undersecretariat of Defense and constituted on June 25, 2012, is the body in charge of assisting the Permanent Secretary in all the functions within its competence and to provide administrative support to COPERFAS.

141. Finally, it should be added that the development of the structure, job descriptions and work procedures of the Permanent Secretariat are thoroughly developed in the Organization Book of the Permanent Secretariat of COPERFAS.

- *Guarantees of the representatives of the professional associations in the Council.*

142. In addition, the 2011 Organic Law on the Rights and Duties of the Members of the Armed Forces seeks to progress in the exercise of the right to professional association, strengthening the rights of representatives in the Armed Forces Staff Council in a manner commensurate with the relevance of their functions.

143. Thus, according to art. 7 of the COPERFAS Regulations, in relation to art. 51 LODDFAS, the representatives of the professional associations on the Personnel Council and their alternates have the following rights:

- a) the right to express themselves freely in the exercise of their functions under the principles of independence and responsibility and not to be discriminated against in their professional promotion because of the performance of their representation.

- b) To have time credits for the exercise of their duties in the preparation of issues, preparation of proposals and possible membership in working groups of the Staff Council. The allocation of these time credits shall be established by resolution of the head of the Directorate General of Personnel, and shall be set at 33% of the normal working day on a monthly basis.

- c) To attend the meetings of the Personnel Council, in plenary or in commissions, ordinary or extraordinary. Attendance at the aforementioned meetings shall be considered an act of preferential service, for which reason the designated representatives, and their alternates, if any, shall attend the meeting in their regulation uniform.

- d) To display and disseminate the announcements, communications or publications of its association through the means, procedures and general channels of electronic communication provided by the Ministry of Defense, as referred to in Article 44.1 of Organic Law 9/2011, of July 27, 2011.

144. Due to various proposals made regarding the increase in the time credit granted to association representatives, through Ministerial Order 40/2022, of July 7, on measures to support professional associations of members of the Armed Forces, the number of representatives of the associations with dedicated time has been substantially increased.

145. In this way, within the measures contemplated by art. 2 of the indicated Ministerial Order 40/2022, of July 7 to facilitate the work of their representatives in the Personnel

Council of the Armed Forces, "*the associations of members of the Armed Forces that are part of it may designate, for a minimum period of three months, to a representative, for each association other than those, who will dedicate to associative activities a maximum number of hours per month equivalent to a ten-day work day."* (Paragraph 1).

146. Likewise, as established in art. 2.2 of the aforementioned Ministerial Order, "[a]dditionally and with the same regime and effects provided for in the previous section, each association may designate one more representative for every thousand members.

147. And, finally, it is contemplated for the legal representative of each one of these associations that "the dedication to associative activities may be extended to one maximum number of hours per month equivalent to the working day of ten days." (art. 2.3 of the said ministerial provision).

> *Said measures were approved in application of the first additional provision of Royal Decree 910/2012, of June 8, approving the COPERFAS Regulations, which empowers the Undersecretary of Defense to provide, among others, the personal resources necessary for the operation of the Armed Forces Personnel Council.*

c) <u>Regulations of the Civil Guard: Council of the Civil Guard.</u>

148. Organic Law 11/2007, of October 22, 2007, regulating the rights and duties of the members of the Civil Guard (LODDGC) complements the recognition and regulation of the professional associationism of the Civil Guards with the regulation of the Civil Guard Council, "a new collegiate body in which representatives of the members of the Civil Guard and the Administration will participate, with the aim of improving both the professional conditions of the Civil Guards and the functioning of the Institution itself" (as stated in its Explanatory Memorandum).

149. Its regulation is found in the following legislation:

- Article 52 and following of the Organic Law 11/2007, of October 22, regulating the rights and duties of the members of the Civil Guard.
- Royal Decree 785/2022, of September 27, which approves the Regulation on the organization and internal functioning of the Council of the Civil Guard.

i. Composition and operation.

150. Articles 52 and 53 of the LODDGC define the council and detail its parity composition.

> *"Article 52. Council of the Civil Guard.*

"Under the presidency of the Minister of the Interior, or person delegated by him, the Council of the Civil Guard is created as a collegiate body in which representatives of the members of the Civil Guard Corps and of the Ministries of the Interior and of Defense will participate, with the aim of improving the professional conditions of its members, as well as the functioning of the Institute."

Article 53. Composition of the Council.

1. *Are members of the Council of the Civil Guard:*
   a) *In representation of the members of the Civil Guard: the members elected by the members of the Institute by personal, free, direct and secret suffrage. The number of these representatives shall be determined by Scale, with each Scale having one member on the Council and one more for every 6,000 civil guardsmen who are active in that Scale.*
   b) *Representing the General State Administration: the members appointed by the Ministers of the Interior and Defense, up to the same number of representatives as those elected by the members of the Institute.*
2. *The representative of the General State Administration appointed by the President shall act as Secretary.*

151. The system for electing the representatives of the members of the Civil Guard, by personal, free, direct and secret ballot is developed in Royal Decree 1963/2008, of November 28, which develops the Electoral System of the Council of the Civil Guard, among whose rules we highlight the following:

- All Civil Guards on active duty or reserve status shall be voters. Those who are on active duty in the corresponding Scale shall be eligible (art. 3.1 RD 1963/2008).
- The system for exercising the suffrage by all voters shall be through a computer application that complies with the necessary guarantees of confidentiality, integrity and security of the content.
- It also specifies the relevant rules on the electoral administration, the census, the constituency and the electoral procedure, scrutiny and proclamation of the electors.

152. The LODDGC establishes the essential rules for its operation. Article 54 requires that there be a minimum of four sessions per year.

“"Article 50. Working arrangements.

1. For the purposes of its operation, the Board may meet in plenary session or by commissions.

2. The committees shall deal with those matters of a specific nature assigned to them by the plenary.

3. Meetings of the Armed Forces Staff Council may be ordinary or extraordinary. The Council shall meet in ordinary session to deal with matters within its competence at least once every three months. The Council shall meet in extraordinary session when convened by its Chairman, on his own initiative or at the request of the majority of the members representing the professional associations on the Council. The request shall be made in writing to the Chairman.

4. At the meetings of the Board, the treatment of each of the proposals appearing on the agenda shall begin with their presentation and defence by the proposing association when one of its representatives is present, or with their reading in other cases. The summary of the debate shall be recorded in the minutes referred to in the following section.

5. The minutes of the plenary session and of the committees, once approved by the Council itself, shall be forwarded to the Military Life Observatory.

6. The reports of the Council shall contain the agreements reached on the matters appearing on the agenda when, after the corresponding debates, there is consensus between the members representing the professional associations of the Armed Forces and those of the Administration. In the absence of such agreement, the reports shall contain the different positions reflected in the minutes of the meetings.

7. There shall be a permanent secretariat of the Council within the Under-Secretariat of Defence, which shall provide the necessary administrative support. Its head shall act as secretary at the meetings of the Council."

153. The development of said legal provisions is made in 16 et seq. of Royal Decree 910/2012, of June 8, which approves the Regulations of the Personnel Council of the Armed Forces, which determines that the Council shall operate as follows:

- in Plenary Session
- or in committees, providing for the existence of at least the following Committees: Preparatory for plenary meetings, Occupational Risks Committee, Regulations and Professional Status Committee and the Equality and Diversity Committee.

154. For a detailed study of these operating rules, we refer to section VII of the Report of the Ministry of the Interior, which is attached to these observations.

ii. Functions

155. Article 54 of the LODDGC regulates the competences of the Council:

Article 54. Functions of the Council

The Council of the Civil Guard shall have the following powers:

1. To take cognizance of and be previously heard on the following matters:

a) Establishment or modification of the professional status and disciplinary regime of the Civil Guard.

b) Determination of working conditions.

c) Remuneration system.

d) Teaching programs and training plans of the Civil Guard.

e) Permits, vacations and leaves of absence.

f) Supplementary social welfare plans.

g) Matters affecting other social, professional and economic aspects of the Civil Guards.

2. To report, in advance, on the legal or regulatory provisions to be issued on the aforementioned matters.

3. To know the quarterly statistics on the rate of absenteeism and its causes, on accidents in the line of duty and occupational diseases and their consequences, on accident rates, as well as periodic or specific studies carried out on working conditions.

4. Analyze and evaluate the proposals and suggestions made by the Civil Guards on the personnel regime, on their rights and duties, on the exercise of the right of association and on the social aspects that affect them.

5. Collaborate with the Administration to achieve the establishment of as many measures as possible to maintain and increase productivity.

6. Participate in the management of social works for the personnel, when so determined by the corresponding regulations.

7. Receive quarterly information on personnel policy.

8. Any other duties attributed to it by law and general provisions.

iii. Means and guarantees for its correct operation

- *Administrative support structure for the Civil Guard Council*

156. The regulations governing the Council of the Civil Guard not only specify the functions of the Council, but also provide that it should have the necessary means to carry them out.

157. In accordance with article 12 of Royal Decree 785/2022, of September 27, which approves the Regulations on the organization and internal operation of the Civil Guard Council:

> *"Article 12. Support body for the Council.*
>
> *The Council of the Civil Guard shall have a support body or unit for the technical and administrative assistance of the persons holding the offices of members of the Council.*
>
> *It shall assist the presidency and the secretariat in all the functions set forth in the preceding article."*

- *Guarantees of the representatives of the professional associations in the Council.*

158. Article 57 of the LODDGC establishes the rights of the representatives of the members of the Civil Guard in the Council.

> *"Article 57. Rights of the members of the Civil Guard Council.*
>
> *The members of the Council of the Civil Guard, representing the members of the Institution, shall have the following rights:*
>
> 1. *Free circulation in the premises of the electoral unit, without hindering the normal operation of the corresponding units.*
> 2. *Free distribution of publications related to professional or associative issues.*
> 3. *Accumulation in one of the members of the candidacy of time credits, monthly hours and leaves, prior communication to the General Directorate of the Police and Civil Guard.*
> 4. *Non-discrimination in their professional promotion by reason of the performance of their representation."*

159. There are additional safeguards to ensure the freedom and indemnity of the representatives of the members of the Civil Guard on the Council. For example, in the event that a file is initiated to determine whether there is insufficiency of professional faculties for the purpose of determining the limitation to occupy certain destinations, if said file affects a member of the Civil Guard Council, art. 99 of Law 29/2014, of November 28, on the Civil Guard Personnel Regime requires the necessary prior issuance of a report from the Council. Similarly, if for any reason a disciplinary proceeding for

serious or very serious misconduct is initiated against a member of the Board, a report from the Board is required (Art. 64. Organic Law 12/2007, of October 22, 2007, on the disciplinary regime of the Civil Guard).

5. Application of the regulations and jurisprudence examined to the specific case.

d) The restrictions on collective bargaining and collective conflicts comply with the requirements of the ESC(r), particularly Art. G.

160. Notwithstanding the fact that the lack of specificity and proof of the allegations of the complaint should, *per se*, determine its rejection, we must point out that the restrictions that Spanish legislation establishes in relation to the right to collective bargaining and strike with regard to the members of the Armed Forces and the Civil Guard scrupulously comply with the provisions of Article G ("Restrictions") of the Revised European Social Charter.

161. This is because, as will be analyzed below, the Spanish democratic legislator has indeed complied with the three requirements imposed by the mentioned article.

i. Legal provision and legitimate purpose.

162. First of all, we refer to the reasoning on legal foresight and legitimate aim made in section C.5.b) in which we analyzed both issues in their common aspects related to the restrictions of articles 5 and 6 ESC(r).

163. There is, however, another specific legitimate purpose that justifies the restriction of collective bargaining rights between the military and the Civil Guard and the State, which derives from the very configuration of the Kingdom of Spain as a social and democratic State under the rule of law in accordance with art. 1 of the Constitution, which is the respect for the powers of the “Cortes Generales” (the Spanish Parliament) and its basic functions of approving laws and, in particular, the law approving the General State Budget.

164. In the general case of an employed person, the working conditions are freely agreed between employer and employee, although such agreements cannot violate: a) the mandatory legal provisions that regulate the inalienable rights of the employee; b) and the rules that have been freely agreed by the representatives of the employees and employers embodied in collective bargaining agreements "bind all employers and employees included within their scope of application and during the entire time they are in force" (art. 82.3 Royal Legislative Decree 2/2015, of October 23, approving the revised text of the Workers' Statute Law). On the other hand, in everything that such rules do not

discipline, the employer is free to organize the activity of the company by virtue of the legally recognized power of management.

165. The above-mentioned scheme can in no way be transferred *per se* to the relations of the State with its civil servants, and this is because:

- The State does not have the freedom of the employer to freely determine or agree the working conditions of its civil servants, but is positively bound by the law, by virtue of the principle of legality that governs for the Administration in general and for civil servants in particular (art. 1, 9.1, 9.3 and 103 of the Constitution, among others).
- And in particular, the Administration cannot freely fix or agree on salaries and general remuneration amounts, because this is a matter reserved for the General State Budget Laws, the approval of which corresponds to the "Cortes Generales" (art. 134 of the Constitution).
- Therefore, it is the legislator (and not the Administration, either unilaterally or in conjunction with its officials) who must determine the revenues to be paid by society to be applied to expenditure; and in an equitable manner it must distribute public expenditure to all the needs to be met by the State, fixing the appropriations available to each Ministry, including for its personnel.

166. Therefore, by excluding members of the Armed Forces and the Civil Guard from the general regime of collective bargaining, the legislator is not, in fact, opting for one model among several possible ones, but rather responding to the requirement derived from the democratic Constitution that governs the country: if the freedom to collectively regulate the relations between the Ministry of Defense or the Home Office, on the one hand, and the military and civil guards, on the other, in terms similar to what happens between workers and employers, would be removing the Legislative power from the possibility of equitably allocating, in accordance with the democratic legislative procedure, the public credits destined to cover all the purposes to be served by the State. Purposes of budgetary appropriations that include those intended to protect the rights and freedoms of third parties or to protect public order, national security or public health.

167. For all these reasons and what has been explained in the previous section, the requirements of the legal provision and the legitimate purpose required by Article G of the ESC(r) are met, which, on the other hand, the author of the claim does not question.

ii. Proportionality.

➢ In relation to art. 6, paragraph. 1 and 2 of the ESC(r).

168. From the examination of the legislation on the system of concertation or dialogue articulated through the Personnel Council of the Armed Forces, or the Council of the Civil

Guard, it can be concluded that: (a) while indeed the legislator has established the members of the Armed Forces and the Civil Guard who have been excluded from the scope of application of collective bargaining recognized to the generality of workers; b) however, it is also true that the legislator, in the OL 9/2011 or in the LODDGC, in addition to recognizing and allowing professional associations, creates a body for consultation between members of the Armed Forces and the Civil Guard and the administration (the Council of the Civil Guard), which alleviates to a large extent the prohibition of unionization and collective bargaining, without detriment to the organization and military discipline, and ensuring the ordinary functions that the law attributes to the Armed Forces or the Civil Guard Corps, that is public safety in a democratic state.

169. Respect for the principle of proportionality is further manifested in the fact that the system of consultation or dialogue specific to the Armed Forces or the Civil Guard seeks to maintain certain essential features which, for the Committee to which we are honored to address, must be present in the collective bargaining covered by art. 6 ESC(r).

Firstly, the broad terms in which study, dialogue or debate can take place within both Councils. It has already been seen that in all of them any issues of interest to the military or civil guards can be dealt with. The only matters excluded, for obvious operational reasons, are "matters related to security and defense policy decisions, the planning and development of military exercises or operations and the use of force" (art. 46.2 OL 9/2011, with respect to the Armed Forces Personnel Council).

171. Consequently, both systems allow consultations to "cover all matters of mutual interest" (art. 46.2 OL 9/2011, with respect to the Armed Forces Personnel Council).

172. The legislator has not only made possible such consultation between the military and civil guard and the Ministries through the aforementioned channels, but has also adopted mechanisms to promote them and guarantee at all times that such consultations take place:

- Not only by providing material and personal resources so that both councils can operate.
- But regulating from the Law itself the essential aspects of operation and imposing a minimum frequency of meetings.
- And also by making it mandatory for them to report, prior to their approval, on the legal provisions and their regulatory developments that are dictated on these matters.

173. This is relevant because the omission of such mandatory reports may serve as a basis for challenging and declaring null and void regulations, or even individual decisions, that are issued without such mandatory reports.

174. In the Judgment of the Supreme Court of February 3, 2022, rec. 382/202035[24], filed by the Professional Association Asociación de la Escala de Suboficiales de la Guardia Civil Profesional, this is, the Association of the scale of non-commisioned officers of the Civil Guard, it was expressly admitted that in the event of non-compliance with the duty to obtain the mandatory report that we are analyzing, this could determine the nullity of the general provision approved without said report. Specifically its 3rd legal basis states that:

> *"Article 26.5 of Law 50/1997, of November 27, 1997, of the Government (in the wording given by the Third Final Provision.12 of Law 40/2015, of October 1, 2015, on the Legal Regime of the Public Sector), which is the rule applicable to the procedure for drafting the contested rule, provides that "Throughout the procedure for drafting the rule, the competent management center shall seek, in addition to the reports and opinions that are mandatory, as many studies and consultations as are deemed appropriate to ensure the correctness and legality of the text". Hence, it is consolidated jurisprudence which holds that the omission of a mandatory opinion is an irremediable procedural defect that determines the nullity of the affected provision. Thus, in STS of November 10, 2020 (ROJ: STS 3630/2020 - ECLI:ES:TS:2020:3630), issued in the contentious-administrative appeal no. 455/2018, it was said: "Regarding the examination of the allegation of infringement of the procedure for drafting general provisions, it should be borne in mind that, according to case law, as stated in the judgment of 13 November 2000, the drafting of general provisions "constitutes a special procedure, provided for by Article 105.1 and regulated generally in Article 24 EC, and a formal limit to the exercise of regulatory power. Its observance has, therefore, an 'ad solemnitem' character, so that, in accordance with the reiterated case law of this Chamber, the omission of the procedure or defective compliance, which results in a transcendental non-observance for the fulfillment of the purpose to which its requirement tends, entails the nullity of the provision that is issued".*"

175. And as examples of contentious-administrative appeals upheld as a result of the lack of report or hearing of the Personnel Council of the Armed Forces or the Council of the Civil Guard we can cite the following:

- The already cited case of the Supreme Court Judgment (3rd Chamber,) of April 27, 2017, in which the claims of the Professional Association of Non-Commissioned Officers of the Armed Forces (ASFASPRO) were upheld, declaring the nullity of Royal Decree 924/2015, stating that "The appeal must be upheld because, as the lawsuit argues, Royal Decree 924/2015 contains regulations on matters in which

[24] https://www.poderjudicial.es/search/AN/openDocument/b36b3173894bf6ee/20220214

according to Article 49. 1 of Organic Law 9/2011, the Personnel Council of the Armed Forces must previously and mandatorily issue its report. "[25]

- Another example of this can be found in the Supreme Court Judgment of April 7, 2022m rec. 404/2021, in which the nullity is declared, no longer of a regulation, but of an organizational agreement of the Civil Guard Headquarters of Oviedo and Gijón:

". Certainly, the modification of the number of Civil Guard command posts in a given province is a manifestation of the Administration's power of self-organization. But the power of self-organization is not exercised in a regulatory vacuum. Even admitting that it often involves a wider margin of discretion than other administrative powers, it cannot be ignored that it is, in any case, subject to those legal rules that directly regulate it in each case. This is what happens in the present case, given that art. 54 of Organic Law 11/2007 requires hearing the Council of the Civil Guard to adopt measures on "social, professional and economic aspects" of the armed forces and art. 4 of Royal Decree 367/1997 requires justifying the "objective needs" that determine the modification of the command posts. The power of self-organization does not allow evading the observance of the rules applicable to the case in question."

176. All this serves to refute the assertion that dialogue is not promoted due to the absence of dialogue, to which EUROMIL alludes when it says that "Spain is not promoting a fair and equal joint consultation between the workers on the one side, and the employer on the other side. For the Armed Forces, social dialogue with the Ministry of Defence is absent: professional associations are not consulted".

177. Such assertions are not only unproven, but radically contrary to reality:

- It has already been seen that dialogue is not only allowed but obligatory through such mandatory consultations, which can determine (and we have seen examples of them) that the Courts annul decisions adopted without the respective Councils being heard.

- Furthermore, both the annexes of the Reports of the Ministry of Defense and the Ministry of the Interior, which are attached to this letter, detail the numerous meetings of the respective Councils, as well as the agreements reached.

178. Additionally, it should be noted that such consultation is not only permitted, but also promoted through the obligation that both Councils be previously heard before decisions affecting the rights of military personnel or civil guards are taken; that, in addition, the

[25] https://www.poderjudicial.es/search/AN/openDocument/000c5a31c0714534/20170512

Administration is provided with adequate means, but also that such dialogue or consultation effectively allows "a possibility to influence the outcome."

179. In this sense, we not only refer to the above-mentioned regulations, but also provide practical examples: In this regard, we refer to Annex V and VI ("Agreements reached in COPERFAS arising from proposals by professional associations, partially or fully accepted") or to ANNEX VIII, which provides a detailed list of the changes in draft regulations introduced at the request of the professional associations; both from the Defense Report attached to these observations, where it is shown that the consultation under analysis does allow professional associations to effectively influence, in defense of the interests of the staff, the decision-making process that affects them.

180. The latter leads us to refute the main reason why, according to EUROMIL, the system envisaged is not proportional because:

> *"Committee of Personnel [is] is fully controlled by the Ministry of Defence. The composition of the Committee is designed in such a way that it pivots on the presence of the associative representatives in a collegiate body, dependent on, and controlled by, the Ministry of Defence"*

181. This assertion, lacking any proof, is also contradicted by all that has been said.

182. Furthermore, from a strictly legal point of view, the general rule in Spanish law is that collegiate bodies involving representatives of professional or social interests are outside the hierarchical subjection relationship that characterizes the relationship between administrative bodies. This is provided in the general regulation of administrative activity, contained in Law 40/2015, of October 1, on the Legal Regime of the Public Sector, whose art. 15.2 states that:

> *"The collegiate bodies of the different Public Administrations in which organizations representing social interests participate, as well as those made up of representatives of different Public Administrations, whether or not they include the participation of organizations representing social interests, may establish or complete their own rules of operation.*
>
> *The collegiate bodies referred to in this paragraph shall be integrated into the corresponding Public Administration, although without participating in the hierarchical structure of the latter, unless so established by their rules of creation, or if it is clear from their functions or from the nature of the collegiate body itself".*

183. That the Armed Forces Staff Council and the Civil Guard Council are indeed outside a strict hierarchical relationship, but allow free debate and agreement within them, for the proper defense of the social interests of the members of the Armed Forces and the Civil Guard, is evidenced by:

- Both from the regulation itself of the aforementioned Councils, and in particular from the guarantees for the military or civil guards who appear in representation of the personnel, to express themselves freely and without any type of discrimination or reprisal.

-As well as the volume of meetings, agreements reached, participation in regulatory processes and initiatives of the personnel representatives that have been fully or partially accepted, as evidenced by the attached annexes to the reports of the Ministry of Defense and the Home Office.

184. From the foregoing it may be inferred that:

- At the same time that the military and members of the civil guard are excluded from the rights of freedom of association, including those of collective bargaining, provided for the common workers; the legislator is concerned with establishing a system of concertation and collective dialogue that effectively allows for listen to and attend to the legitimate professional interests of the military and guardsmen, thus respecting the principle of proportionality.

- And without this conclusion being undermined by the allegations of EUROMIL, which lack any evidence and are contradicted by reality.

➢ *In relation to the right to strike.*

185. In relation to the prohibition of the exercise of the right to strike with respect to the military and members of the Civil Guard, in addition to complying with the requirements of legal provision and legitimate purpose, it is clearly within the margin of appreciation that has been recognized to the States in this matter, without the Kingdom of Spain having transgressed the same by means of a disproportionate decision.

186. It should be recalled that Article 11 of the ECHR expressly provides among its limitations the restriction of this right to police forces. This is a specific and much more concrete limitation than that foreseen in the case of public officials, when the precept itself refers to the State Administration. This shows that the drafters of the ECHR have taken into account the peculiarities that, within the civil service, correspond to the security forces and corps, considerations that are equally transferable to the analogous rights contained in the ESC(r). And indeed, the possibility of such a restriction on the right to strike under Art. 6 of the Charter has been expressly admitted by the Committee (European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113).

187. In fact, article 11 allows the establishment of those restrictions "This article does not preclude the imposition of lawful restrictions on the exercise of rights and freedoms which 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police or the administration of the State."

188. The limitation of the right to freedom of association in the case of police officers and members of the armed forces is enabled by the highest-ranking precept in the Spanish constitutional order, Article 28.1 of the Constitution, which allows, in the terms set out above, to introduce limitations on the right to freedom of association of the military, members of armed forces and police officers. The law that establishes the prohibition is, moreover, an organic law (LO 9/2011 and LODDGC), that is, a law that requires for its approval a greater number of votes (absolute majority, as opposed to simple majority, Article 81 of the Spanish Constitution) so that it enjoys greater democratic support than an ordinary law.

189. As for the legitimate purpose, the existence of a legitimate purpose that in Spanish law protects said restriction of the right to strike, has been examined and confirmed by the Spanish Constitutional Court in its Judgment 371/1993, of December 13, 1993, which declared, in the same line marked by the ECHR (Engel et al. case, June 8, 1976), that *"given the important tasks assigned to the Armed Forces by art. 8.1 CE, it represents an interest of unquestionable relevance in the constitutional order that they are configured in such a way that they are suitable for the fulfillment of those tasks (ATC 375/1983). To this end, the fulfillment of the missions entrusted to them by the aforementioned constitutional precept requires an adequate and effective configuration of the Armed Forces from which, among other singularities, derives their indispensable and specific character of a deeply hierarchical, disciplined and united organization (arts. 1 and 10 of the Royal Ordinances). As a consequence of this, and in accordance with the aforementioned constitutional doctrine, there is no doubt that the legislator may introduce certain peculiarities or establish specific limits to the exercise of the freedoms recognized in the Constitution by the members of the Armed Forces, limits that would entail a differentiation with respect to the general and common regime of those freedoms [...] provided that those limits respond to the principles and essential criteria of organization of the military institution, which guarantee not only the necessary discipline and hierarchical subjection, but also the principle of internal unity, which excludes manifestations of opinion that could introduce undesirable forms of partisan debate [...] or dissension and strife within the Armed Forces, which imperatively need for the achievement of the high purposes that Article 8. 1 of the Constitution, a special and suitable configuration".*

190. And as regards the duty to respect the principle of proportionality, it should be noted that the ECHR has stated that the right to strike acts as an indispensable corollary of the right to trade union association, insofar as it is what enables a trade union to make its voice heard and thus constitutes an important aspect for its members in safeguarding their interests (Schmidt and Dahlström v. Sweden, 6 February 1976). It has also recalled that

the European Social Charter recognizes the right to strike as a means of ensuring the effective exercise of the right to collective bargaining (Enerji Yapı-Yol Sen v. Turkey, 21 April 2009). Finally, it has recognized that this right is not absolute in nature and that it may be subject to certain conditions and be subject to certain restrictions for those officials exercising functions of authority on behalf of the State, as opposed to other members of the civil service whose functions are purely managerial or to public employees of commercial or industrial undertakings of the State, to whom it should not be extended (see Pellegrin v. France, December 8, 1999). Consequently, legal restrictions on the right to strike should define as clearly and strictly as possible the categories of civil servants affected (Enerji Yapı-Yol Sen, cited above).

191. In the case under consideration, the prescribed exception does not extend to all public employees of the State Administration, but refers exclusively to the members of the Armed Forces and the Civil Guard, in their capacity as immediate guarantors of the maintenance of national security and public safety, and to whom the laws also confer an increased responsibility by requiring the former to be permanently available for duty (Articles 6. 1 and 22.1 of the LODDFAS) and, for the latter, total dedication and intervention at all times and places, whether they are on or off duty (article 5.4 of the LOFCS[26]).

192. In the eyes of the ECHR, the need for uninterrupted service, as well as the "armed" character or mandate that characterizes such "agents of the authority", distinguishes this class of collectives from other civil servants and justifies the limitations on their freedom of association, insofar as they make it possible to preserve certain general interests of the State set out in Article 11. 2 of the Convention, in particular, national security, public safety and the defense of order, and so concluded in its judgment of 21 April 2015 in the case of the Governing Board of the Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain, concerning one of the State Security Forces and Corps operating in Spain, the Ertzaina:

> *"37. The Court notes that the restriction prescribed by the disputed law does not extend to all public officials but is aimed exclusively at members of the State Security Forces and Corps as guarantors of the maintenance of public security (see a contrario Enerji Yapı-Yol Sen cited above, § 32). The Court further notes that the same law grants these corps increased responsibility requiring them to intervene at any time and in any place in defence of the Law, whether during working hours or not.*
>
> *38. In the Court's view, this need for uninterrupted service and the armed mandate that characterizes these "Agents de l'Autorité" distinguishes this collective from other civil servants such as magistrates or doctors, and justifies the limitation of their freedom of association. Indeed, the more stringent requirements concerning*

[26] Organic Law 2/1986, of March 13, 1986, on Security Forces and Corps.

them do not go beyond what is necessary in a democratic society, insofar as they make it possible to safeguard the general interests of the State and, in particular, to guarantee its security, public safety and the maintenance of law and order, principles set out in Article 11 § 2 of the Convention.

39. Moreover, the specific nature of their activities justifies the existence of a sufficiently wide margin of appreciation for the State to develop its legislative policy and thus enable it to regulate, in the public interest, certain aspects of the union's activity, without depriving the latter of the essential content of its rights under Article 11 of the Convention (see National Union of Rail, Maritime and Transport Workers v. the United Kingdom, no. 31045/10, § 104, ECHR 2014).

40. Furthermore, the Court cannot agree with the applicant union as regards the conclusions drawn from the recommendations of the Committee of Ministers of the Council of Europe on the European Code of Police Ethics. In particular, the Court notes that the right to strike for the police is not recognized in the said Code. In this respect, the Committee of Ministers considered that the total prohibition of the right to strike for the police is not contrary to the Social Charter and related case law (paragraph 16 above). The Court sees no reason to depart from this conclusion.

41. The foregoing considerations lead the Court to conclude that the facts raised by the specific situation of the present case do not constitute an unjustified interference with the applicant trade union's right to freedom of association, the essential content of which it was able to exercise.

42. Finally, with regard to the possible existence of discrimination against the applicant, the Court recalls that a distinction is discriminatory within the meaning of Article 14 if it "lacks objective and reasonable justification", i.e. if it does not pursue a "legitimate aim" or if there is no "reasonable relationship of proportionality between the means employed and the aim pursued". Moreover, the Contracting States enjoy a certain margin of appreciation in determining whether and to what extent differences between otherwise similar situations justify distinctions in treatment (see Grande Oriente d`Italia di Palazzo Giustiniani v. Italy (no. 2), no. 26740/02, §§ 44 and 45, 31 May 2007). In the present case, the Court considers that the justifications provided by the Government for the specific nature of the functions assigned by law to the State security forces and corps are reasonable, without it being possible to detect any hint of arbitrariness that might suggest the existence of discrimination.

193. On the basis of such reasoning, the Judgment does not find a violation of Article 11 of the Convention in the limitation to the right to strike established by the Spanish Law on the Spanish Police Corps, taken in isolation or in relation to Article 14, regarding the limits of the rights recognized in the Convention.

194. And if this is so in relation to the Police Forces as referred to by the ECtHR in that Judgment, the same conclusion must apply with respect to the exclusion of the right to strike to members of the Armed Forces or the Civil Guard:

- Not only because by virtue of the reservation made to the Convention, as has been seen by Spain in relation to Article 11, it gives it greater room for maneuver.

- Rather, the substance of the conclusions of the ECHR in the Judgment referring to Spain are applicable, with even more reason, with respect to the military forces, which, in the case of the members of the Armed Forces and the Civil Guard, handle weapons and safeguard national defense and State security, which are missions of a permanent nature, hence the availability of the troops (regardless of whether they perform their duties on working days); These are legal assets worthy of protection in a democratic state, which justify certain restrictions to the right to freedom of association, since the armed forces of a democratic country, and of course the security forces, cannot be subtracted from a trade union.

195. All this serves to justify that the restriction under analysis would comply with the requirement of proportionality demanded by Art. G of the ESC(r).

196. The allegations of the collective complaint do not refer to any of these issues, but merely indicate that, as in its view, the restrictions on another right (collective bargaining) are in its view not proportionate, this disproportionality must also be communicated to the suppression of the right to strike[27]

197. However, this allegation is unfounded, since:

- On the one hand, we have already seen that the military and civil guards do enjoy, despite the exclusion of the general regime of the right to collective bargaining, a system of collective bargaining and dialogue that meets the requirements of legality, legitimate purpose and proportionality; and that effectively allows (and this has been verified in practice) defending their rights and interests and effectively influencing the provisions and decisions that may affect them.

- And even if the restrictions to this other right (collective bargaining) were not completely proportionate, this would still not undermine the legitimate purpose, legality and proportionality of the prohibition of the right to strike in order to avoid the possible consequences in case of interruption of its essential activities for security and public order; something, we insist, admitted by the ECHR for another

[27] Specifically when it says "restrictions on the right to strike may be acceptable under specific circumstances and conditions (CGIL v, Italy N O 140/2016 5145), namely when social dialogue and the right of collective bargaining are sufficiently organised and effective . As this is not the case in Spain, EUROMIL considers that the prohibition of the right to strike prescribed in the Organic Law 9/2011 for the Armed Forces personnel, and in the Organic Law 11/2007 for the Civil Guard personnel, is not necessary in a democratic society and should thus be replaced by a partial prohibition"

body of the State Security Forces and Corps in the aforementioned judgment in the case Ertzainen Nazional Elkartasuna (ER. N.E.) v. Spain, no. 45892/09.

198. In short, the allegations in EUROMIL's complaint fail to establish that the deprivation of the right to strike to the armed forces or the Guardia Civil is indeed disproportionate.

D. On the allegation of discrimination.

i. Summary of the complaint.

199. The collective complaint states the alleged existence of discrimination of the members of the Armed Forces and those of the Civil Guard in the following terms:

"It is submitted that the regulatory framework for the social protection of the military discriminates against them. The military, currently, does not enjoy effective judicial protection for social jurisdiction in all respects like the rest of the Spanish workers, such as civil servants and the rest of the public and private workers. For this reason, it is essential that the representatives of the military personnel obtain effective judicial protection for social jurisdiction, with the representatives of the military personnel being able to act in the same way as unions in defence of the interests and rights of workers.

EUROMIL recalls that as public service employees, military personnel should be treated not only as "Citizens in Uniform" but also as "Workers in Uniform", meaning that they should be entitled to the same rights as any other worker concerning their working conditions and their professional, economic and social interests."

200. Other accusations of discrimination are also made throughout the complaint, although without specifying what they consist of.

ii. Response to the claimant's allegations.

201. The Kingdom of Spain wishes to make it clear, from this initial stage of the observations, that such allegations of discrimination are absolutely unjustified. And in the case of an alleged discrimination in relation to the right to the protection of Judges and Courts, it also shows a lack of knowledge of the reality of the Judiciary in Spain.

202. In particular, it does not explain why there is discrimination with respect to effective judicial protection with respect to other public officials.

203. If reference is made to the existence of a Military Jurisdiction, a special jurisdiction separate from the Judiciary as admitted by art. 117.5 of the Constitution, the following must be pointed out:

- The Military Jurisdiction is, by imperative of art. 117.5 of the Constitution[28], subject to the "principles of the Constitution" and integrated in the Judicial Power, despite being a special jurisdiction. Organic Law 6/1985, of July 1, 1985, of the Judiciary Power[29], Organic Law 4/1987, of July 15, 1987, on the Competence and Organization of the Military Jurisdiction[30] and Organic Law 5/2005, of November 17, 2005, on National Defense[31] reiterate the integration of the military jurisdiction into the Judiciary and the full submission to the Constitution, which includes the fundamental rights and, among them, the effective judicial protection of art. 24 CE.

- In particular, the right to an **impartial judge** is specifically enshrined, in accordance with art. 24 of the Spanish Constitution. Constitutional Court Rulings 204/1994 and 113/1995 conclude that Organic Law 4/1987 unequivocally proclaims the independent and irremovable character of the Military Trial Judges, as part of the military jurisdiction. And it also includes specific guarantees in this regard (for example, the general duty of art. 6 of LO 4/1987 that "All are obliged to respect the independence of the bodies exercising military jurisdiction").

- The right of defense is also recognized; Title V of Organic Law 4/1987 deals with the defense, which begins by proclaiming in art.102 that "Everyone has the right to defense before the military jurisdiction."

204. Furthermore, there is a unification at the top between Military and Ordinary Jurisdiction: the **Supreme Court**, as the "highest jurisdictional body in all orders" (art. 123 CE), is also the military jurisdiction: according to art. 55 of the LOPJ, the Fifth Chamber of the Supreme Court is the Military Chamber "which will be governed by its

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[28] Spanish Constitution:
Article 117.5
The principle of jurisdictional unity is the basis for the organization and functioning of the Courts. The law shall regulate the exercise of military jurisdiction in the strictly military sphere and in cases of state of siege, in accordance with the principles of the Constitution.

[29] Organic Law 6/1985, of July 1, 1985, of the Judiciary.
Article 3.
1. Jurisdiction is sole and is exercised by the Courts and Tribunals provided for in this Law, without prejudice to the jurisdictional powers recognized by the Constitution to other bodies.
2. The organs of military jurisdiction, which form part of the Judicial Power of the State, base their organization and operation on the principle of jurisdictional unity and administer justice in the strictly military sphere and, where appropriate, in the matters established by the declaration of a state of siege, in accordance with the Constitution and the provisions of the criminal, procedural and military disciplinary laws.

[30] Organic Law 4/1987, of July 15, 1987, on the Jurisdiction and Organization of the Military Jurisdiction.
Article 1: The military jurisdiction, part of the Judicial Power of the State, administers justice in the name of the King, in accordance with the principles of the Constitution and the laws.

[31] Organic Law 5/2005, of November 17, 2005, on National Defense.
Article 14. Nature and functions.
The organs of the military jurisdiction, part of the Judicial Power of the State, base their organization and operation on the principle of jurisdictional unity and administer justice in the strictly military sphere and, where appropriate, in the matters established by the declaration of the state of siege, in accordance with the Constitution and the provisions of the criminal, procedural and military disciplinary laws.

specific legislation and, supplementarily, by this Law and by the regulations common to the other Chambers of the Supreme Court".

205. Also the Judgments issued by the Military Courts, like any other judicial decision, are subject to appeal for protection before the Constitutional Court if it is considered that there has been a violation of fundamental rights.

206. In addition, it should be noted that, in accordance with the Constitution, which limits military jurisdiction to the strictly military sphere, the Military Jurisdiction has a limited scope, which extends fundamentally to the investigation and prosecution of the crimes defined in the Military Criminal Code and in military contentious-disciplinary appeals against disciplinary sanctions imposed administratively on members of the Armed Forces (art. 4 OL 4/1987).

207. This means that except for these two issues, the rest of the jurisdictional appeals against any decisions of the Ministry of Defense or the Ministry of the Interior that military and Civil Guardsmen and women wish to file must be filed before the Courts and Tribunals of the contentious-administrative jurisdictional order. That is, they can appeal before the same Courts as any other public official, and are subject to the same rules and guarantees, including those of art. 24 of the EC (effective judicial protection)[32].

208. If, in spite of this, EUROMIL doubts (without any proof) that such protection is not effective, it is sufficient to examine the recent case law of the contentious order relating to acts of the Ministry of Defense to see how we can find numerous examples of judgments that give reason to the military or Civil Guards in defense of their interests by annulling acts in personnel matters with which they were not in agreement. To cite recent examples, we can mention the Judgments of the Supreme Court of September 25, 2023 (rec. 444/2021)[33]; Judgment of December 20, 2022 (rec. 655/2021)[34], Judgment of December 14, 2022, rec. 781/2022[35]; etc.

209. Additionally, in the previous sections of this document we have mentioned examples of appeals in which the Supreme Court also upheld the claims made by professional associations of Military or Civil Guards.

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[32] An example of this identity of forum between military and other public officials can be found in the distribution of competences among the different bodies of the contentious-administrative jurisdictional order. For example, according to art. 11 of Law 29/1998 on Contentious-Administrative Jurisdiction;
"The Contentious-Administrative Chamber of the Audiencia Nacional will hear in sole instance:
(a) Of appeals filed in relation to general provisions and acts of the Ministers and Secretaries of State in general and in personnel matters when they refer to the birth or termination of the service relationship of career civil servants. Likewise, it shall hear appeals against acts of any central bodies of the Ministry of Defense referring to promotions, order and seniority in the ranks and assignments."

[33] https://www.poderjudicial.es/search/AN/openDocument/d7b016b6919cdf0da0a8778d75e36f0d/20231005

[34] https://www.poderjudicial.es/search/AN/openDocument/0c77bd872102cfada0a8778d75e36f0d/20221230

[35] https://www.poderjudicial.es/search/AN/openDocument/38e49e72b4f0ca03a0a8778d75e36f0d/20221228

All this serves to prove that there is no discrimination whatsoever, nor deprivation of rights to the protection of judges and courts, against members of the Armed Forces or the Civil Guard.

Accordingly, the following is respectfully REQUESTED from the Committee**:**

1. To deem the Kingdom of Spain's observations on the merits of the collective complaint to have been duly submitted, together with all the attached documentation.

2. To declara that, by virtue thereof, neither Article 5 nor Article 6 of the Charter has been violated by the Kingdom of Spain.

Madrid to Strasbourg, 15 November 2023.