



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

3 April 2024

**Case Document No. 3**

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

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

**Registered at the Secretariat on 28 February 2024**



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## **Response to the submission by the Spanish Government regarding the admissibility of the complaint EUROMIL v. Spain N°219/2022**

EUROMIL wishes to make observations in response to the submission made by the Spanish Government (the Respondent) regarding the admissibility of Complaint No. 219/2022, which was submitted to the European Committee of Social Rights (ECSR) on 16 December 2022. The complaint alleges violations of Articles 5 and 6 of the Revised European Social Charter (RESC).

### **I. Preliminary remarks**

Before addressing the Respondent's arguments, EUROMIL wishes to draw attention to a procedural issue related to the submission of the response. The Spanish Government initially submitted its response in Spanish, delaying for two months the submission of the English translation. This action violates the procedural rules established by the ECSR, which requires English and French as working languages and mandates complaints to be in an official language of the Council of Europe.<sup>1</sup>

Consequently, EUROMIL reports that the response presented herein is based solely on the English translation provided by the Respondent. Any differences between its meaning or interpretation and the Spanish text should not be considered. The responsibility for complying with the procedural requirements and for ensuring the timely provision of documents rests solely with the Government of Spain.

In light of this procedural irregularity, we kindly ask the ECSR to take notice of the fact that the respondent has not complied with the language requirements if an issue arises in this regard.

### **II. Articles 5 and 6 of the Revised European Social Charter**

The Respondent argues that the establishment of professional associations such as the Committee of Personnel of the Armed Forces (COPERFAS) and the Council of the Civil Guards, complies with the requirements established by Articles 5 and 6 of the European Social Charter. It is argued that these associations possess characteristics and competencies similar to trade unions, allowing members to express demands regarding working conditions, remuneration, and other entitlements, thereby exercising their rights.

According to the Respondent, the legislative framework governing professional associations in the Armed Forces and the Civil Guard *not only contemplates the defence of the collective interests of the military through these professional associations, but also promotes their consultation for the defence of said interests.*

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<sup>1</sup> ECSR, [Committee Rules](#). Rule 18 prescribes English and French as the working languages, while Rule 24 states that complaints must be in one of the official languages of the Council of Europe.



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Furthermore, the Respondent challenges the admissibility of the complaint arguing that EUROMIL has failed to demonstrate the non-compliance with the relevant Articles of the RESC in the Kingdom of Spain. EUROMIL contends that the evidence supporting the arguments is found within the legislative framework itself, which imposes restrictions and limitations thereby curtailing the enjoyment of rights under Articles 5 and 6 of the Charter. Contrary to Spain's claim of mitigating the prohibition of unionization and collective bargaining, EUROMIL argues that the legal framework perpetuates and reinforces these limitations.

### 1. Reservations on the Charter

The Respondent highlights Spain's reservations concerning the Application of Article 11 of the 1950 European Convention of Human Rights (ECHR). While the Convention and the European Social Charter (ESC) systems are indeed complementary and interdependent, rights are regulated in more detail under the 1961 Charter, its Additional Protocol of 1988, and the Revised Charter adopted in 1996.<sup>2</sup> This is particularly relevant regarding trade unions' rights, which are generically protected as a freedom of assembly and association under Article 11 of the Convention *but find a more specific identification of positive obligations to be fulfilled under Articles 5 and 6 of the Charter and Revised Charter.*<sup>3</sup>

Spain ratified the Revised European Social Charter on May 17, 2021, without reservations, therefore accepting all its provisions. Annex 2 submitted by Spain clearly indicates its accession to the Revised Charter without including the reservations made to the ESC of 1961.<sup>4</sup>

*For these purposes, it should be noted that Spain has acceded to the Revised European Social Charter, made in Strasbourg on May 3, 1996, by Instrument of Ratification on April 29, 2021 (BOE número 139, June 11, 2021), entering into force on the following July 1, **without including the reservation made to the European Social Charter of 1961 in the new Revised Charter.***

The RESC is an instrument that significantly updates and expands upon the rights outlined in the original Charter, broadening its scope; it is a regional instrument directed towards a specific number of states with relatively advanced economies and robust welfare state systems.<sup>5</sup> Compared to the ECHR, the Charter offers broader economic and social rights protection and also extends beyond the European Union Charter of Fundamental Rights in various aspects. Additionally, the Charter's system features the Committee, functioning as a quasi-judicial body,

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<sup>2</sup> Council of Europe, *European Social Charter and European Convention on Human Rights*, <https://www.coe.int/en/web/european-social-charter/-european-social-charter-and-european-convention-on-human-rights>.

<sup>3</sup> Ibid.

<sup>4</sup> Annex to the Spanish Government's observations on the merits, *Anexo 2.- Informe Ministerio de Interior*.

<sup>5</sup> A. Nolan, Working Paper, *A Brief Overview of the European Social Charter System*, March 2020, [https://www.housingrightswatch.org/sites/default/files/Nolan\\_A%20Brief%20Overview%20of%20the%20European%20Social%20Charter%20System.pdf](https://www.housingrightswatch.org/sites/default/files/Nolan_A%20Brief%20Overview%20of%20the%20European%20Social%20Charter%20System.pdf).



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evaluating collective complaints concerning the Charter's unsatisfactory application by States, thus highlighting the importance of upholding its rights.<sup>6</sup> Spain's consent to be bound by the RESC underscores the importance of guaranteeing a satisfactory application of the rights enshrined within it.

Therefore, EUROMIL argues that Spain's reservations to Article 11 ECHR should not be taken into account when analysing the case of the infringement of Articles 5 and 6 of the RESC.

## **2. Article 5 – Right to organise**

In response to the arguments submitted by the Kingdom of Spain regarding Article 5, the proportionality of the prohibition on trade union rights can be disputed as follows.

Personnel Council and the Civil Guard Council meetings are conducted under hierarchical conditions, evident from several indicators. This hierarchical arrangement impedes representatives from effectively carrying out their duties, with mandatory attendance in uniform being a significant factor.<sup>7</sup> The comparison provided in Annex I between the Police Council (15/01/2014) and the Civil Guard Council (17/04/2023), as shown in media photographs and press releases from the National Police and Civil Guard, illustrates this subordinate structure.<sup>8</sup> Additionally, instances of enforced attendance within the Civil Guard Council, leading to disciplinary measures for non-compliance, and the recent shift in the order of speech from association representativeness to rank level further accentuate a structure that inhibits genuine dialogue.<sup>9</sup>

Furthermore, when professional associations attempt to engage with any managerial or organic entity within the Armed Forces structure, they are required to proceed exclusively through the Personnel Council.<sup>10</sup> Such requirement grants the Personnel Council discretion to transmit or withhold the request to the relevant body without providing any explanation to the requesting associations.

In terms of facilities, there exists a notable disparity between police trade unions and Civil Guard professional associations. While police unions benefit from dedicated premises in all provinces, Civil Guard associations frequently share inadequate facilities among multiple associations, compromising their ability to

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<sup>6</sup> A. Nolan, Working Paper, *A Brief Overview of the European Social Charter System*, March 2020.

<sup>7</sup> ANNEX I. - *Usa Uniforme*, containing the notice regarding the use of the uniform, along with the abovementioned photographs.

<sup>8</sup> Ibid.

<sup>9</sup> ANNEX II. - *Asistencia Consejo*.

<sup>10</sup> All procedures must be carried out through the online registration of the MoD and supervised by the Permanent Secretary of COPERFAS. Among those procedures are included those related to "Queries or proposals, requests or suggestions from a professional association submitted for evaluation by the COPERFAS office". Article 15, paragraph k), on the functions of the 'secretario permanente' of COPERFAS, [Royal Decree 910/2012](#), of June 8<sup>th</sup>, approving the Regulation of the Armed Forces Personnel Council.



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effectively serve their members.<sup>11</sup> As a result, they are often obliged to rent or purchase premises to ensure adequate fulfilment of their activities.

This situation is aggravated by the fact that Guardia Civil professional associations receive a notably inadequate allocation of days compared to National Police trade unions. Specifically, these associations, tasked with similar responsibilities in public security and workers' rights defence as their counterparts in the State Security Forces and Corps, receive only 10% of the annual days granted to trade unions for these purposes.<sup>12</sup>

A comparable situation occurs in the Armed Forces, where the allocation of time credits is determined by the head of the Directorate General of Personnel via resolution, typically set at 33% of the regular working day on a monthly basis, as specified in Organic Law 9/2011.<sup>13</sup> The regulation intensifies the restrictions imposed on associations by requiring that association meetings must take place outside of normal working hours, further hindering their ability to effectively carry out their duties and responsibilities.<sup>14</sup>

An additional factor to consider is the prohibition preventing representatives of professional associations of the Armed Forces from visiting military workplaces. Such prohibition significantly impairs their ability to evaluate the living and working conditions of military personnel, which ultimately results in a denial of genuine dialogue and deprives them of the necessary knowledge to perform their duties.<sup>15</sup>

➤ In relation to other guarantees

The Respondent's reference to the Military Life Observatory as a platform for consensus-building and social dialogue with Armed Forces members is misleading.

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<sup>11</sup> According to [Organic Law 11/2007](#), premises may be transferred based on availability, as further elaborated in [Royal Decree 175/2022](#) concerning the rights of Professional Associations. However, this decree prohibits carrying out any work activity on behalf of the associations, seemingly without justification, in order to limit the working capacity of professional associations and impede the efforts of administrative staff or contracted lawyers. Additionally, the connection to availability implies that in practice, in most provinces, no premises are provided at all, or when they are, they are for shared use, posing a significant impediment to the work of the associations.

<sup>12</sup> ANNEX III. - *Allocation Days*, showcasing the regulations that govern the days allocated to National Police trade unions (*Circular 1-2012 of the National Police*) and the regulations that govern the days assigned to professional associations of the Civil Guard (*Royal Decree 175/2022* on the rights of professional associations and their representatives, and *Order INT/656/2023* that develops it). Additionally, a detailed breakdown outlining the comparative allocation of days between the National Police and the Guardia Civil is included.

<sup>13</sup> Article 7, *Royal Decree 910/2012, of June 8<sup>th</sup>, approving the Regulation of the Armed Forces Personnel Council*; Article 2, [Ministerial Order 40/2022, of 7<sup>th</sup> July, on support measures for professional associations of members of the Armed Forces](#).

<sup>14</sup> [Organic Law 9/2011, of 27<sup>th</sup> July, on the rights and duties of members of the Armed Forces](#), Article 45.4.

<sup>15</sup> *Organic Law 9/2011, Article 45.2:*

*Associations that meet the requirements established in Article 48.2 may request from the Delegates and Subdelegates of Defence the use of premises, preferably in facilities of the Delegations or Subdelegations of Defence, for the holding of informative meetings intended for members of the Armed Forces. In the event that, due to the lack of availability of appropriate premises, it is not possible to meet the request, the Delegates or Subdelegates of Defence will manage the use of suitable premises that may be located in other installations of the Ministry of Defence, which are not units of the force or support to the force of the Armies.*



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It is essential to clarify that the Military Life Observatory functions primarily as a collegiate, advisory, and consultative body associated with the General Courts, rather than a forum for fostering dialogue with military personnel.

Additionally, EUROMIL opposes the claim that the provision allowing military personnel and Civil Guards to join similar international associations enhances their bargaining power. International organizations lack jurisdiction at the national level, and the security and defence sectors are currently unable to engage in sectorial dialogue at the EU level, effectively excluding organizations like EUROMIL from participation.

When considering the legal framework, the Kingdom of Spain's claim that professional associations of members of the Armed Forces and the Civil Guard "alleviate to a large extent the prohibition of unionization and collective bargaining" cannot be sustained. On the contrary, both bodies are structured in a manner that only affords limited participation of professional associations in specific issues and matters. However, this does not equate to genuine social dialogue or negotiation, which encompasses a broader dimension.

As a result, neither COPERFAS nor the Civil Guard Council are bodies in which dialogue is promoted, nor is there a framework in place to facilitate it. These collegiate bodies do not replace the ability that unions have to participate in a body that promotes social dialogue and collective bargaining. Therefore, the assertion that these associations adequately mitigate the restrictions on unionization and collective bargaining fails to acknowledge the profound limitations imposed on their ability to advocate for the rights and interests of their members.

➤ On the allegation of discrimination

In terms of court discrimination, a significant disparity emerges in the treatment of military personnel and civil guards. Individuals joining the Armed Forces and Civil Guard have been subject to the social protection scope of the General System of Social Security and its regulating norms since January 1<sup>st</sup>, 2011.<sup>16</sup> The material scope of applicability for members of the Armed Forces and Civil Guard includes coverage and recognition of permanent disability, death, and survivor benefits, governed by the rules of the General Social Security System. However, a closer

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<sup>16</sup> The third additional provision of the consolidated text of the General Social Security Law, approved by [Royal Legislative Decree 8/2015](#), of October 30<sup>th</sup>, stemming from *Article 20 of Royal Decree 13/2010*, of December 3<sup>rd</sup>, on actions in the fiscal, labour and deregulation areas to promote investment and job creation, mandates the inclusion of certain personnel in the General Social Security Regime, effective from January 1<sup>st</sup>, 2011. This includes personnel listed in Article 2.1, with the exception of those falling under letter i), of the consolidated text of the *State Civil Service Law*, approved by [Royal Legislative Decree 670/1987](#), of April 30<sup>th</sup>, for the exclusive purposes of what is established in said regulation and in its implementing provisions. <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-13436-consolidado.pdf>



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examination reveals a systemic bias against military personnel and civil guards in their ability to exercise their rights.

Under this framework, the National Institute of Social Security is responsible for handling procedures related to the recognition of entitlement to economic benefits and issuing resolutions for all initiated procedures. Any judicial challenges to these resolutions fall under the jurisdiction of the social jurisdiction judicial bodies.<sup>17</sup>

As a result, affected military personnel and civil guards must interact with the Social Security Administration rather than the Ministries of Defence or Interior when faced with administrative decisions in this area. Consequently, resolutions issued by the Social Security Administration, which the interested party - military or civil guard - deems contrary to law and/or their rights and interests, must be challenged in the social jurisdiction.

However, they will not receive support from unions in either individual lawsuits or those established for the defence of general and collective interests "in defence of workers and beneficiaries of social security". Military personnel and civil guards, unlike other workers subject to the general regime of Social Security,<sup>18</sup> are denied the right to be represented by unions.

Furthermore, unions enjoy exemptions from the payment of judicial deposits and imposition of procedural costs, further disadvantaging military personnel and civil guards who are unable to form unions.<sup>19</sup> Additionally, while employees registered with trade unions can deduct membership fees from their taxes, civil guards and military personnel affiliated with professional associations are denied this benefit, as professional associations are not considered in the relevant legal text.<sup>20</sup> This disparity arises due to the fact that professional associations are not included in the relevant legal provisions governing tax deductions, underscoring the unequal treatment suffered.

The inability to establish or affiliate with trade unions and to transform their professional associations into trade unions, therefore, severely restricts military personnel and civil guards from exercising their fundamental rights essential for defending themselves on equal terms as other workers and public servants who are subject to the same Social Security system.

Moreover, professional associations face significant barriers as they are not exempt from paying costs, which is a substantial limitation and disincentive in the defence of workers' rights. The fear of losing the procedure and the consequent

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<sup>17</sup> [Law 36/2011](#), of October 20<sup>th</sup>, regulating social jurisdiction.

<sup>18</sup> As established in Article 20 of [Law 36/2011](#).

<sup>19</sup> [Law 36/2011](#), Articles 229 and 235.

<sup>20</sup> [Law 35/2006](#), of November 28<sup>th</sup>, on *Personal Income Tax and partially amending the laws on Corporate Income Tax, Non-Resident Income Tax and Wealth Tax*, Article 19(2).





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imposition of costs (and the resulting financial loss) deters them from going to court to appeal against rules that are harmful to workers.

In light of these facts, it is obvious that the Respondent's claim that the Organic Laws provide mechanisms for defending the rights of military personnel and civil guards lacks credibility. Contrary to the Respondent's assertions, professional associations lack the characteristics and competencies similar to trade unions, as the framework does not allow to "set up or join genuine organisations for the protection of their material and moral interests" and does not afford "such organisations [...] to benefit from most trade union prerogatives". Based on these grounds, the current situation in Spain is not aligned with the provisions provided in Article 5 RESC.

### **3. Article 6 – Collective bargaining and social dialogue**

The absence of fundamental union competencies, such as collective bargaining and social dialogue, deprives military personnel and civil guards of essential avenues for safeguarding their rights.

Within both the Council of the Civil Guards and COPERFAS, there is a noticeable absence of inclination towards social dialogue or collective bargaining.

The Respondent states:

*170. 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 defence policy decisions, the planning and development of military exercises or operations and the use of force".*

*171. Consequently, both systems allow consultations to "cover all matters of mutual interest".*

Nevertheless, EUROMIL claims that the composition and functioning of these Councils fail to provide effective avenues to address matters of mutual interest. In the Civil Guard Council, for instance, when a disagreement arises and a vote is taken, the matter is finally decided by the president of the body, a government appointee. This setup, in which disagreements are limited to, at most, the declaration of a negative vote, suggests *per se* a fundamental lack of commitment to promoting dialogue or social consensus within the Council.

Similarly, the absence of voting provisions in the Armed Forces Personnel Council significantly limits the influence of dissenting associations. Disagreements within COPERFAS lead to the possibility of presenting what is known as a "reparo", which results in mere declarations of intent, with no meaningful impact on public policy concerning military personnel.





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Moreover, EUROMIL raises concerns regarding the frequent vetoing of proposals within the Civil Guard Council, which clearly limits the extent of discussion within the Council.<sup>21</sup> Annex IV contains clear instances of professional associations submitting requests to discuss issues affecting workers, only for the administration to dismiss them as either "related to the service" or "outside the purposes of professional associations". The fact that the Administration, representing the State, holds the majority in both Councils limits the influence of military personnel and civil guards in shaping their working conditions. Therefore, the legislative framework does not promote an environment in which representatives' perspectives and concerns are taken into account, and genuine representation and dialogue take place.

Despite the Respondent's claim of the existence of consultation channels and mechanisms, such as the provision of material and personal resources, regulation of essential operational aspects, mandatory minimum meeting frequencies, and requiring the submission of reports prior to their approval, EUROMIL argues that these measures are severely limited and insufficient to constitute genuine negotiation. For instance, mechanisms like the right to submit reports do not promote consensus or social dialogue, nor do they serve as bargaining instruments for collective negotiations. Additionally, mere scheduling of meetings and establishment of functioning do not meet the standards set by the Charter.

Regarding the fact that there is a requirement for the submission of reports by the associations before the approval of legal provisions, EUROMIL asserts that collective bargaining should encompass more than just the creation of legal norms. In fact, collective bargaining should also cover many other aspects requiring compliance with existing regulations, rather than only focusing on new provisions. Additionally, a judicial's body consideration of the absence of a report on a regulation fails to meet the fundamental criteria of negotiation or serve as a means for representatives of military personnel and civil guards to effectively influence the establishment of their working conditions.

Other examples that illustrate the lack of dialogue between professional associations and the Ministry of Defence include instances where AUME had sent a letter to the Minister of Defence, which the Ministry handled as an administrative appeal. Furthermore, there have been instances where AUME's requests for meetings with the Undersecretary of Defence have been denied on the grounds that such matters should be addressed through COPERFAS.<sup>22</sup> Clearly, the documents submitted by the Respondent fail to address the principles of negotiation, consensus, or social dialogue.

Moreover, it appears that the Respondent's observations have been written using reports from the General Directorate of the Civil Guard and the Technical General

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<sup>21</sup> ANNEX IV. - *Documentación Respuestas Asunto Servicio.*

<sup>22</sup> ANNEX V. - *Documentación Propuestas AUME – Ministerio.*



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Secretariat of the Ministry of Defence. There has been no intervention by the Ministry of Labour in the position taken by the Kingdom of Spain concerning this collective claim, despite its competence in formulating the rules governing conciliation and social dialogue and in interacting with trade unions to ensure their participation in public policies. Such a finding is remarkable in view of the fact that the Minister of Labour became aware of the collective complaint during a public meeting between the Minister of Defence and a Civil Guard members' association.<sup>23</sup>

Overall, it is evident that neither of the Councils possess the essential mechanisms required for meaningful negotiation or conflict resolution. Despite efforts to facilitate consultations through established channels and the provision of resources, these measures fall short of fostering genuine dialogue. This absence exacerbates the challenges faced by military personnel and civil guards in participating in policy decisions impacting their rights and interests, ultimately affecting the system's compliance with the provisions of Articles 5 and 6 of the European Social Charter.

As a consequence, proportionality is disrupted by the imposition of limits that hinder effective agreement and social dialogue, exceeding the provisions set by Article G of the Charter. Both concepts must encompass not only instances of agreement but also disagreement and conflict, with adequate instruments available to workers' representatives in such cases. However, Spain's current regulatory framework allows unilateral imposition by the State, represented by the Ministries of the Interior and Defence. This leaves professional associations of the Armed Forces and the Civil Guard members without the capacity or tools necessary to influence the formulation and decision-making process regarding public policies on social, economic, and professional issues directly affecting them.

➤ In relation to legislative power

In paragraph 165, the Respondent states:

*[...] 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).*

Continuing in paragraph 166:

*[...] 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,*

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<sup>23</sup> The meeting has been publicised through the media and covered the association's labour demands regarding the right to unionise, <https://www.europapress.es/nacional/noticia-yolanda-diaz-analiza-guardias-civiles-reivindicaciones-favor-sindicacion-conciliacion-laboral-20230126190633.html>.



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***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.***

EUROMIL claims that the objectives pursued through collective bargaining do not interfere with legislative or governmental functions concerning relations with representatives of the Armed Forces and Civil Guard. Rather, they aim to establish forums for participation and dialogue where various issues, including salaries and working conditions, can be negotiated.

It is crucial to underscore those decisions regarding the *allocation, scope, or destination of public funds - including those dedicated to protecting the rights and freedoms of individuals, maintaining public order, national security, or public health* - are not directly affected by the existence of collective bargaining or the right to strike. Unions representing civil servants or police forces like the National Police, regional police forces, and local police, which also share responsibility in these critical areas of protecting rights, maintaining public order, and ensuring national security, are not limited in the enjoyment of such rights. Government employees' salaries, established by the General State Budget Laws, result from social dialogue and bipartite negotiation between the Executive and the most representative unions. Therefore, Spain's response fails to consider that regulations governing other civil servants, including police personnel, are also subject to legislative authority. Civil servants maintain the right to engage in collective bargaining through trade unions and, clearly, their collective bargaining activities by unions representing public administration workers do not undermine Legislative authority or governmental prerogatives.

It can be argued that if the scope of participation is clearly defined within legal boundaries, excluding operational matters such as security and defence policy decisions, military planning, exercises, or the use of force, then the defence and security of the State remain unaffected. In such exclusive areas, unions representing members of the Armed Forces and the Civil Guard should have unhindered access to engage in discussions regarding social, economic, and professional matters. These are the domains where social dialogue and coordination are essential. Additionally, criteria or principles like military discipline or hierarchical relationships do not apply in these contexts by their very nature and therefore cannot be compromised.

By limiting participation to legally defined areas the preservation of the State's defence and security is ensured. Therefore, unions representing members of the Armed Forces and Civil Guard should face no barriers to participating in discussions in the exclusive areas of social, economic, and professional matters.



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These discussions are crucial for fostering social dialogue, and in these spheres, by their very nature, criteria or principles such as military discipline or hierarchical relationships do not apply and, thus, cannot be compromised.

➤ In relation to restrictions faced by professional associations

The Respondent references the OSCE Compendium of Human Rights in the Armed Forces to highlight the constraints faced by military associations and unions. These limitations typically include restrictions on members of the armed forces and legal barriers prohibiting strikes or collective actions that could disrupt operations or threaten security. The Compendium does, however, also acknowledge that concerns regarding military discipline and operational effectiveness may not necessarily impact the ability to discuss and represent issues related to conditions of service. It notes that in several countries, associations focusing on working conditions and socio-professional aspects have not adversely affected operational effectiveness:<sup>24</sup>

*The first concern is the question of military discipline and possible interference with the esprit de corps and operational effectiveness. The raising of collective grievances on the part of service personnel has traditionally been seen as equivalent to insubordination [...]. **Whether such concerns should impact the ability to discuss and represent issues around conditions of service is clearly open to debate. Associations that focus on working conditions and the socio-professional aspects of military rights, as opposed to operational and strategic processes and decisions, have had no discernible impact on operational effectiveness in Austria, Belgium, Denmark, Finland, Germany, Ireland, The Netherlands and Sweden.***

It's crucial to underline that elements such as discipline, hierarchy, subordination, and efficiency are tools for fulfilling constitutional objectives and cannot be extended beyond duty performance. Civil Guard and military personnel should be allowed to advocate for their economic, social, and professional interests without being required to remain neutral or impartial, as neutrality in such matters could hinder their ability to effectively pursue legitimate aspirations for improvement.

While members of other police forces like the National Police Corps, Autonomous Police Forces, and Local Police, are also obliged to maintain neutrality and adhere to discipline and hierarchy, they are still permitted to join unions, within certain limits. Similarly, civil guards and military personnel should not face absolute prohibitions on joining unions. Experience has shown that collective bargaining enhances institutional functioning, improves service provision to citizens, and promotes a positive working environment conducive to better working conditions.

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<sup>24</sup> OSCE, *Human Rights of Armed Forces Personnel: Standards, Good Practices and Recommendations*, March 2021, pages 108 and 109,  
[https://www.osce.org/files/f/documents/6/5/480143\\_1.pdf](https://www.osce.org/files/f/documents/6/5/480143_1.pdf).

By allowing civil guards and military personnel to engage in collective bargaining, the State not only upholds their rights but also contributes to the overall efficiency and well-being of the institutions and society at large.

➤ Recent legal developments

EUROMIL underscores the Spanish Government's recognition, through legally relevant actions, that negotiation regarding remuneration can indeed be conducted by the professional associations of Civil Guard members, functioning as genuine trade unions ("sindicatos"), alongside National Police unions. This acknowledgement materialized in an Agreement signed on March 12, 2018, between the Ministry of the Interior, the main National Police unions (SUP, CEP, UFP, and SPP), and the principal Professional Associations of the Civil Guard (AUGC, UO, AEGC, APROGC, UNIÓNGC, ASES GC, and AP-GC).<sup>25</sup>

The introductory paragraph of the Agreement expressly states:

*The Ministry of the Interior, along with the primary Unions of the National Police and the leading Professional Associations of the Civil Guard, **following a negotiation process and aiming to achieve salary parity** among the State Security Forces and autonomous police forces performing analogous functions, while fostering modernization, enhancing service quality, and improving working conditions for National Police and Civil Guard officers, **have agreed to implement the measures detailed in this agreement** to accomplish this objective.*

This unequivocal statement represents evidence of the Spanish Government's recognition of the professional associations of Civil Guard members as "sindicatos", a designation that carries legal ramifications. EUROMIL highlights how, in this instance, the recognition does not challenge the essential duty of upholding public security in Spain. Any attempt to refute these undeniable facts would constitute a blatant disregard for the truth and the principle of legitimate trust.

This same conclusion is supported by judgement No. 113/2023, issued by the Central Contentious-Administrative Court in June 2023.<sup>26</sup> This ruling upheld the contentious administrative appeal filed by the Unified Association of Civil Guards (AUGC), directing "the Ministry of the Interior to begin a renegotiation for compliance with the third and eighth clauses with the signatories of the Agreement on behalf of the National Police Unions and the Associations Professional members of the Civil Guard".

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<sup>25</sup> *Agreement between the Ministry of the Interior, National Police trade unions and professional associations of the Civil Guard*, 20 March 2018, [https://www.boe.es/eli/es/res/2018/03/19/\(1\)](https://www.boe.es/eli/es/res/2018/03/19/(1)).

<sup>26</sup> ANNEX VI. - *AUGC Sentencia 110-22*, Judgement No. 113/2023, of June 27, 2023, issued in PA 110/2022, by the Central Contentious-Administrative Court, number 3.



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#### 4. Article 6 - Right to strike

EUROMIL stresses the fundamental nature of the right to strike as a core trade union right and should not be perceived as a separate right. This right, intrinsic to the right of freedom of association, finds protection in several international human rights instruments.<sup>27</sup>

EUROMIL considers that the collective representation of military personnel is based on three pillars. Firstly, the right to freedom of association implies **the right of everyone to form and join trade unions for the protection of their interests**. Secondly, there is the principle of social dialogue and the right to engage in collective bargaining. Therefore, as previously explicated, once that military trade unions are established, they should be involved in a well-regulated dialogue with the political and military authorities and have the right to negotiate and conclude collective binding agreements at the appropriate levels. Thirdly, there is the right to strike, to be considered alongside the right to collective bargaining, as intrinsic to the right to organise, and only to be used as an instrument of last resort to defend workers' rights.<sup>28</sup>

Although the recognition of the specific nature of the military profession does not make the simple application of the right to strike obvious, EUROMIL is convinced that its implementation is feasible with appropriate support measures.<sup>29</sup>

In the decisions concerning *EUROMIL v. Ireland* (112/2014) and *Italian General Confederation of Labour - CGIL v. Italy* (140/2016), the ECSR took a clear position on granting collective bargaining and strike rights to military personnel. The ECSR's opinion on the right to strike for armed forces personnel evolved, particularly in the *CGIL v. Italy* case, where the Committee found a violation of Article 6§4, being of the opinion that trade union rights apply to military personnel.<sup>30</sup>

The Committee highlighted the intrinsic connection between the right to strike and collective bargaining, affirming that any restrictions must be prescribed by law, pursue legitimate aims, and be necessary in a democratic society. It stressed the importance of accompanying restrictions with adequate, impartial, and speedy conciliation and arbitration proceedings. In the case of Italy, the Committee considered that in the absence of an organised minimum service in case of a strike and the lack of an effective collective bargaining process, the absolute prohibition of the right to strike is not proportionate to the legitimate aim pursued and therefore not necessary in a democratic society.<sup>31</sup>

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<sup>27</sup> EUROMIL, *Position Paper on the Right to Strike in the Armed Forces*, April 2020, [https://euromil.org/wp-content/uploads/2020/04/2004\\_EUROMIL\\_Position\\_Paper\\_Strike.pdf](https://euromil.org/wp-content/uploads/2020/04/2004_EUROMIL_Position_Paper_Strike.pdf).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> EUROMIL, *Position Paper on the Right to Strike*, April 2020.

<sup>31</sup> Ibid.





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In light of the above, it can be concluded that the prohibition of the right to strike for the Armed Forces personnel and the Civil Guard personnel, is not necessary in a democratic society and should thus be replaced by a partial prohibition.

### **III. Conclusions**

In conclusion, it is clear that the current state of affairs results in a lack of proportionality, thus contravening Articles 5 and 6 of the European Social Charter and surpassing the proportionality boundaries established in Article G. Within a democratic society, there exists no valid justification for restricting the rights guaranteed by Articles 5 and 6 of the RESC. Failure to uphold these rights may jeopardize the requirement to uphold the rights and freedoms of individuals or to safeguard public order, national security, and public health.

The failure of the national legislature to establish a genuine and effective system of consultations aimed at social conciliation and dialogue exacerbates the situation. As a result, there is a significant lack of authentic avenues for the participation of representatives of military personnel and civil guards in meaningful consensus-building and social dialogue. Moreover, the positioning of professional associations within Article 22 of the Spanish Constitution, rather than Articles 7 and 28, facilitates a framework that favours political authority, thereby hindering, if not outright preventing, the legitimate protection of the rights and interests of military personnel and Civil Guard members, a direct contravention of Articles 5 and 6 of the European Social Charter.

The absence of a genuine and effective system of consultations aimed at fostering social consensus and dialogue when disagreements arise, as well as deliberate obstructions by the state to prevent meetings requested by professional associations, further underscore the lack of real and effective mechanisms for negotiation. This finally acts as the benchmark for evaluating the adequacy of the system in accordance with the provisions of Articles 5 and 6 of the European Social Charter.