EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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Case Document No. 4

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

REPLY FROM THE GOVERNMENT TO EUROMIL'S RESPONSE ON THE MERITS

Registered at the Secretariat on 13 May 2024

MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERALDE
ASUNTOS CONSTITUCIONALES
Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

THE KINGDOM OF SPAIN'S SUBMISSION

IN REPLY TO THE COMPLAINANT ORGANIZATION'S RESPONSE TO THE OBSERVATIONS ON THE MERITS

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COLLECTIVE COMPLAINT
No.219/2022

EUROMIL

v.

SPAIN

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The Kingdom of Spain has been notified of the letter submitted by EUROMIL in response to the observations on the merits of the present complaint made by the Government of Spain. By means of the present observations, within the time-limit granted for this purpose, we submit to the Committee, to which we respectfully address, our reply with regard to the allegations made by the complainant trade union in relation to the written observations on the merits submitted by this party.

GENERAL CONSIDERATIONS

1.- Lack of evidence nor factual data of the collective complaint

1. EUROMIL does not make any new arguments in relation to their initial submissions. These new submissions are not suported on new evidence and on many occasions are mere opinions about what they consider might be the best system for representing and defending the professional interests of public employees of the military.

2. What is really at stake in this collective complaint is not whether or not there are other formulas for the collective defence of the interests of civil servants with military status, but to verify whether or not the Spanish system of professional associations in the Armed Forces (hereinafter, FAS), as well as in the Guardia Civil are in line with articles 5 and 6 of the revised Charter.

3. The submissions are not only not supported by factual data, but they even contradict, the literal wording of legal precepts and recurrently resort to comparisons with the National Police unions and the functioning of the Police Council which do not correspond to reality. In the specific case of the Guardia Civil, despite the differences in the names of the professional associations of the Guardia Civil and the police unions and the Councils of the Guardia Civil and the National Police, the matters on which the representatives of both groups must be consulted and have the opportunity to debate are practically the same, and the functioning of both collegiate bodies is equally analogous. Moreover, this can also be transferred to the statutory scope of the Armed Forces without any major problem.

4. Due to the repetition of the first arguments, it is necessary to insist on some of the well-founded considerations that justify the full compliance of the Spanish legal system of professional associations of the military for the defence of their professional interests with articles 5 and 6 of the revised Charter.

2.- On the military nature of the Guardia Civil

5. A first argument must be made about the military nature of the Guardia Civil (GC), regardless of the public security functions it performs together with the National Police.

6. The Guardia Civil is part of the State Security Forces and Corps, not of the Armed Forces. Organic Law 2/1986, of 13 March 1986, on Security Forces and Corps, and Organic Law 5/2005, of 17 November 2005, on National Defence, configure it as an Armed Institute of a military nature, to which the Government or the person in charge of the Ministry of Defence can entrust military missions, although it shares public security functions with other police forces, such as the National Police or the autonomous regional police forces, although in different territorial areas and in material spheres that are partly different.

7. The military nature of the Guardia Civil (O.L. 2/1986 and O.L. 5/2005), entails additional requirements in terms of the legal status of its members (Code of Conduct, Law on Rights and Duties, Disciplinary Law, Military Criminal Code) and, along these lines, entails, on the one hand, the non-admission of trade union freedom, in the terms already indicated by the Constitutional Court, and, on the other, the specific regulation of professional associations within the Guardia Civil. With regard to its functions and missions, it is necessary to differentiate between the actions of the Guardia Civil in times of peace, within the scope of Article 104 of the Constitution, to "protect the free exercise of rights and freedoms and guarantee public safety", where it participates jointly with the National Police and the rest of the Security Forces and Corps, and where there is even room for concerted action with police unions, from its action in times of crisis or war, aspects which also justify the existence of a specific framework, common to the rest of the military personnel included in the Armed Forces, for the defence of economic, social and professional interests.

8. In this sense, article 24 of Organic Law 5/2005, of 17 November, on National Defence, not only assigns the Guardia Civil its participation in missions of a military nature, derived from

its status as an armed institute of a military nature, but in times of war and during a state of siege, it is placed under the direct dependence of the head of the Ministry of Defence, all of which are missions and dependencies that do not apply to the National Police.

9. Hence the need, once again, to preserve the current channels of coordination and defence of the economic, social and professional interests of the military administration, which guarantees the proper institutional cohesion with the Armed Forces, especially in the present context of "hybrid warfare", in which any weakness could be exploited to the detriment of the aforementioned cohesion of the State's defence, in which, having overcome the old external security/internal security scheme, the State's response must be homogeneous, continuous, at all times and in the face of any threat, to guarantee Spain's sovereignty and independence, the defence of its territorial integrity and constitutional order, as established in Article 8 of the Constitution, and the free exercise of rights and freedoms and the guarantee of citizen security, even in times of crisis, in accordance with Article 104 of the Constitution.

3.- International legal framework.

10. The exclusion of the right to organise for members of the Armed Forces and other military institutions is guaranteed by the following international treaties and conventions ratified by our country:

a) Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950 (Article 11(2)).

b) 1966 International Covenant on Civil and Political Rights (Article 22.2).

c) 1966 International Covenant on Economic, Social and Cultural Rights (Article 8.2).

d) International Labour Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, 1948 (Article 9.1).

e) ILO Convention No. 98 on the Right to Organise and Collective Bargaining, 1949 (Article 5.1).

f) ILO Convention No. 151 concerning Labour Relations in the Public Service, 1978 (Article 1.3).

g) Finally, Article 5 of the CSEr, both in its original and revised versions, which postulates, in relation to the right of workers to form organisations for the protection of their economic and social interests and to join such organisations, that "the principle establishing the application of the guarantees provided for in this provision to members of the armed forces and the extent of their application to this category of persons shall be determined by national laws and regulations".

4.- Reservation to the Revised European Social Charter

11. With regard to the applicability and extension of Spain's reservation to the European Convention on Human Rights (hereinafter, ECHR) and the 1961 ESC we refer to what was already stated in our first observations. Both subsistent reservations, together with the circumstance that the revision of the Social Charter has not entailed any modification of the literal wording of its articles 5 and 6 concerned, and the fact that the Spanish domestic legal system is unanimous in excluding the FAS and GC from the right to organise, replacing it with a system of professional associations as an appropriate means of defending the professional interests of their members, allow to conclude that the decision of the Spanish legislator on this reservation is constant and unequivocal on this point.

5.- "Triple proportionality test"

12. The three principles used by the European Court Human Rights (ECtHR) to verify whether or not a specific interference limiting rights is compatible with the provisions contained in the ECHR, are fully and unequivocally applicable to professional associations in the field of public military employees and the arguments set out in the reply to collective complaint 219/2022 are therein reproduced here. It may also be emphasised that the basic core of trade union activity revolves around collective bargaining, the taking of conflict measures and the right to strike.

13. The justification for the exclusion of the Armed Forces and the Civil Guard from the right to organise is also clearly contained in the constant jurisprudence of the Spanish Constitutional

Court (for example, Judgement 273/1994, of 17 October), which essentially bases it on two different but complementary grounds:

a) On the one hand, in terms of their rationale, the link between these groups and what we might call the "hard core" of State sovereignty makes it necessary to keep them "watertight" against the ideological options existing in society and separate them from the debate and the partisan game: the restrictions on trade union freedom have thus been seen as instrumental in preserving their independence and neutrality, in line with the justification offered for restricting the political and trade union rights of judges and magistrates (illustrative examples are Judgement 101/1991; 97/1985; 107/1986; 161/1987; and 77/1988).

b) On the other hand, case law has resorted to the characteristics of profound hierarchy, discipline, obedience and unity, which are indispensable to the military organisation in the fulfilment of its purposes and without which they would be distorted (Articles 20 of Organic Law 5/2005, of 17 November, on National Defence and 6 of Organic Law 9/2011, of 27 July, on the rights and duties of the members of the Armed Forces), to justify certain specialities in the exercise by these groups of a military nature of certain fundamental rights with obvious connections to trade union freedom (Judgements 272/2006; 81/1983; 69/1989; 371/1993; 273/1994; y, 127/1995).

14. In a similar vein, the ECtHR has held that while the right to strike acts as an indispensable corollary to the right of trade union association (*Schmidt and Dahlström v. Sweden*, 6 February 1976) and as a means of ensuring the effective exercise of the right to collective bargaining (*Enerji Yapı-Yol Sen v. Turkey*, 6 April 2009), it has also held that this right is not absolute in nature and may be subject to certain conditions and restrictions for officials exercising authority on behalf of the State as opposed to those exercising authority on behalf of the State. Turkey, 21 April 2009), but it has also stated that this right is not absolute and that it may be subject to certain conditions and restrictions for officials exercising authority on behalf of the State, as opposed to other members of the public service whose functions are purely managerial and to whom it should not be extended (*Pellegrin v. France*, 8 December 1999).

15. More recently, in its judgment of 21 April 2015 in the case of *Junta Rectora del Ertzainen Nazional Elkartasuna (E.R.N.E.) vs. Spain* - in which it examined the complaint of a violation

by Spain of Article 11 ECHR for having denied the exercise of the right to strike to the trade union of the Basque Autonomous Police -, the ECtHR considered that the limitation of the freedom of association of its agents was justified, considering that the specific nature of their activities justified the existence of a sufficiently wide margin of appreciation for the State to develop its legislative policy and thus allow it to regulate, in the public interest, certain aspects of the trade union's activity, without depriving the latter of the essential content of its rights. Furthermore, it recalled that the Committee of Ministers of the Council of Europe has considered that the total prohibition of the right to strike for the police is not contrary to the CSE and the relevant case law.

16. As far as collective bargaining is concerned, in view of the powers granted to the consultation bodies of both military institutions, the SAF and the Civil Guard and, in general, the functions attributed to the professional associations, there is no qualitative difference between the legal means of promoting the legitimate rights and interests of the members of these institutions and those available to National Police officers. By way of proof, even EUROMIL's recognises the participation of the professional associations representing the Civil Guard in the process of salary equalisation, on an equal footing with the National Police unions, which culminated in the Resolution of 19 March 2018, of the Secretary of State for Security (BOE no. 69, of 20 March).

17. Furthermore, although strike action is forbidden to members of the Armed Forces and the National Police (Change of Order), the military professional associations, however, exercise their rights of assembly and public demonstration in defence of their professional, economic and social rights with complete normality, even together with police unions; a graphic document is attached which demonstrates the concerted participation of the professional associations of the National Police and the National Police unions in different demonstrations in defence of common interests.

18. In short, although the promotion and defence of the professional, economic and social interests of Spanish military personnel are excluded from the scope of application of Organic Law 11/1985 for reasons of legal and even political culture, typical of southern European countries, the system of professional association of the Spanish military and their Councils offers legitimate and proportional alternatives to these public servants for the defence of their professional rights and interests, without detriment to the essential services they provide to

the public, national defence and public security. The limitations of the manifestations of the rights of articles 5 and 6 of the CSEr are within the scope of the restrictions to which they may be subjected, in accordance with article G of Part V of the CSEr.

PARTICULAR CONSIDERATIONS

19. EUROMIL's new submissions can be concentrated into two main groups. On the one hand, insisting that the system of professional associations is insufficient for the defence of the interests of the military. On the other hand, presenting some differences with the trade unions.

1.- The right to have professional associations

20. As previously stated, the exclusion from the right to organise for those who hold military status and are therefore subject to a specific personal status, is compensated (as it happens in other specific groups of civil servants as Judges, Magistrates and Prosecutors, who must also remain "watertight", by means of professional associationism) in two ways through which military personnel can form associations and participate in them: on the one hand a generic one, for the pursuit of any lawful purpose, which they may exercise in accordance with the provisions of Organic Law 1/2002, of 22 March, regulating the Right of Association (hereinafter, LODA); on the other hand through a specifically corporate means, for the defence and promotion of their professional, economic and social rights and interests, with no other limitations in this second case than those established in the aforementioned laws.

21. The professional associations of military personnel, regulated in a coinciding manner in Organic Law 11/2007 (Civil Guard) and in Organic Law 9/2011 (FAS), are effective instruments for the promotion and defence of the professional, economic and social interests of their members, i.e. personnel with military status, even though they are not trade unions, as was amply explained in the initial reply, in short, fully guaranteeing the right to representation and defence of professional interests through a whole series of activities which, in practice, are identical to those which, in this respect, could be exercised as trade union activities.

22. In this sense, article 1.1 of Organic Law 11/1985, of 2 August, on Trade Union Freedom, establishes that *all workers have the right to form trade unions freely for the promotion and*

defence of their economic and social interests. If both types of associative entities, trade unions (as in the case of police trade unions) and professional military associations, pursue the same aims, the different nature of the two cannot in itself determine that professional associations are not an ideal channel for compliance with the requirements of articles 5 and 6 of the CSEr. What is decisive for the defence of the professional, economic and social interests of the military is not the trade union nature of the entity that is to protect and promote them, but the content of the associative action to achieve this end; that is to say, whether the essential content of trade union freedom (article 2 of Organic Law 11/1985), even with certain constitutional and legal restrictions provided for in our domestic legislation, in accordance with the margin allowed to the national legislator by international conventions on the subject, can be achieved through the military professional associations and the consultation bodies in which the associations are integrated, the military personnel councils of the Armed Forces and Civil Guard, to no lesser extent, for example, than in the National Police, to cite the parameter of constant reference of the complainant entity.

23. It is worth mentioning at this point the Audiencia Nacional judgment of of 11 March 2015 (rec. 316/2014), which upheld the decision of the Ministry of Employment and Social Security to deny the constitution of the so-called "Unified Union of the Civil Guard" on the understanding that *what is important is not the name of this or that association, but its function and its capacity to manage the professional or social interests of its members. As soon as an association has as its objective (or among its objectives) the management and promotion of the professional interests of its members, it does not need to be a trade union in order to comply with the requirements of Article 11.1 ECHR*.

2.- Hierarchy and subordination

24. EUROMIL argues that elements such as discipline, hierarchy, subordination and effectiveness are tools to fulfil constitutional objectives and cannot be extended beyond the line of duty, and that SAF and Civil Guard personnel should be allowed to defend their economic, social and professional interests without being required to remain neutral or impartial, as neutrality in these matters could hinder their ability to effectively pursue their legitimate aspirations for improvement.

25. Although these aspects have already been examined in our initial set of observations, it seems necessary to insist that hierarchy and subordination are general principles which, although they are particularly evident in military forces (FAS or GC), are not exclusive to them, as they are also proclaimed for other security forces (Article 5.1.d of Organic Law 2/1986), just as effectiveness is included in our legal system as one of the principles governing the actions of all Public Administrations (a principle proclaimed in Article 103.1 of the Constitution, together with that of hierarchy, among others).

26. With regard to neutrality and impartiality, as with the previous principles, they are particularly required of those persons serving functions of a military nature, but generally of all security forces as principles governing the exercise of their police functions (Article 5.1.b of Organic Law 2/1986; Article 9.a of Organic Law 9/2015; and article 18 of Organic Law 11/2007); the observance of the principles of neutrality and impartiality is not required of members of the FAS and GC in their associative activity to promote their professional, economic and social rights and interests, either in general or within the staff councils.

27. To these organisational principles of hierarchical institutions, we should add the principle of external projection of the military organisation and its components, of unconditional subordination to the Government, which is enshrined in the aforementioned Article 97 of the Constitution, given that it attributes to the Spanish Government the direction of the civil and military administration and the defence of the State, within the framework of which traditional trade union action must necessarily have limits, without prejudice to the State giving channel to the defence of the professional and social interests of military personnel and police forces.

3.- Activities of the Armed Forces Personnel Council (hereinafter, COPERFAS) and the Civil Guard Council

28. EUROMIL doubts as to the representative effectiveness of the Civil Guard and FAS Staff Councils must be considered inconsistent in view of the data already provided in the initial reply regarding the activity of the professional associations in these Councils.

29. Reiterating the data already provided in our initial observations,, with regard to the FAS, it is worth remembering that the annual average number of plenary sessions held over the last

three years (2021-2023), whether ordinary or extraordinary, has been seven (7) and that since the constitution of the COPERFAS there have been sixty-six (66) plenary meetings, which, in short, results in holding a session every two months in which to present and debate the necessary claims in defence of the professional interests of the military.

30. To this activity of plenary sessions must be added the entire glossary of requests and questions (average of 71), information on general provisions (average of 36 actions) or requests for information (average of 160 per year), i.e. the representative activity of the professional associations has a more than adequate and reasonable channel for its valid and effective deployment.

31. The establishment of this procedural channel, far from restricting the activity of the professional associations, is a guarantee both for them and for the Ministry of Defence, providing legal certainty to these two-way relations as they are channelled through a specific and permanent body (Permanent Secretariat of COPERFAS).

32. On the other hand, the establishment of a specific channel for the reception, registration and processing of proposals or suggestions from professional associations, in addition to being established in a regulation of appropriate rank (Royal Decree 910/2012 of 8 June, approving the Regulations of the Armed Forces Staff Council), is a decision inherent to the exercise of the power of direction and organisation that is recognised to the Administration and which, in short, has the clear purpose of coordinating and properly processing the requests made, directing them towards the specialised administrative bodies competent to provide a full response to them.

33. Finally, it should be noted that the Permanent Secretariat gives a reasoned response, after obtaining the reports from the competent bodies, to all requests, proposals, complaints and suggestions from professional associations, with the claimant's simple assertion of "discretion to transmit or deny the request to the relevant body without giving any explanation to the requesting associations" lacking, therefore, any evidentiary support whatsoever.

34. As far as the Civil Guard is concerned, it should also be noted that in 2024 alone, with the working groups between the Administration and professional military associations of Civil

Guards planned up to May, a total of 42 meetings are planned with the representative associations, to work on matters dealt with by the Council (Plenary Sessions, Commissions, Working Groups), far more than the meetings held, in the same year, for example, within the Ministry of the Interior's Delegate Committee, where the representative trade unions participate, and where only 11 meetings are planned over the course of the year.

35. This shows the volume of activity that actually takes place within the consultation body, over and above the quality of the work, as will be seen later, when we refer to the amendment currently being processed to the Law on the Civil Guard Personnel Regime.

4.- New specific allegations

36. EUROMIL refers to certain specific circumstances which, due to their purely anecdotal nature, are not relevant in order to justify the inadequacy of the regime of professional associations of groups of a military nature to Articles 5 and 6 of the CSE.

4.1.- Uniformed attendance at COPERFAS

37. Given that attendance at COPERFAS is a right and, therefore, the representatives of the associations are not obliged to attend, article 51 of Organic Law 9/2011, of 27 July, on the rights and duties of members of the Armed Forces, qualifies such attendance as a preferential act of service, and therefore such attendance is carried out wearing the uniform in accordance with article 24 of the same Organic Law, insofar as it proclaims the military's duty to wear the uniform in acts of service.

38. In any case, the hierarchy, discipline and other values and principles inherent to the military status are inherent to the military status and do not disappear by the simple fact of not wearing the regulation uniform, and it is not considered relevant that it is the clothing that determines the degree of defence of professional interests.

39. As far as the Civil Guard is concerned, it must also be emphasised that such a statement has no bearing on the central question of whether the restrictions on the right recognised by Article 5 of the CSEr are proportionate. The fact that attendance at meetings of the Plenary of the Civil Guard Council is not only a right, but also a duty, is due to the fact that it

constitutes an act of service, and the obligation to wear the uniform, consistent with the military nature of the Corps (and being, it is reiterated, an act of service). However, this does not prevent or undermine the performance by the professional associations of the function of promoting the legitimate rights and interests of the Civil Guards in the Council and outside it, having been absent from the Council on several occasions, communicating this to the President, without this having led to the adoption of any disciplinary measure. Moreover, in this regard, there is no element of contrast with the functioning of the Police Council (except that the trade union representatives do not attend wearing the uniform), which, according to article 2.1 of Organic Law 9/2015 of 28 July on the Personnel Regime of the National Police, is also an institute with a hierarchical structure ("The National Police is an armed institute of a civilian nature, with a hierarchical structure").

4.2.- Participatory constraints in the field of QA

40. It is argued by EUROMIL that the Civil Guard is structured in such a way that only limited involvement of professional associations is allowed on specific issues and matters. However, this does not amount to real social dialogue or negotiation, which encompasses a broader dimension. There is no regulatory framework to promote or facilitate dialogue.

41. On the contrary, according to article 54 of Organic Law 11/2007, of 22 October, regulating the rights and duties of members of the Guardia Civil, it is mandatory to submit to the Council of the Guardia Civil:

a) The establishment or modification of the professional status and disciplinary regime of the Guardia Civil.
b) The determination of working conditions.
c) The remuneration system.
d) The teaching programmes and training plans of the Guardia Civil.
(e) the system of leave, holidays and leave of absence.
(f) supplementary social welfare schemes.
g) Matters affecting other social, professional and economic aspects of the Civil Guards.

The Council must also report, in advance, on the legal or regulatory provisions to be issued on the aforementioned matters.

It is also responsible for it:

a) Be informed of 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.
b) To analyse and evaluate the proposals and suggestions put forward 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.
c) Collaborate with the Administration to achieve the establishment of all measures aimed at maintaining and increasing productivity.
d) Participate in the management of social works for the staff, when so determined by the relevant regulations.
e) Receive quarterly information on personnel policy.

42. This is, as can be seen, a very wide range of matters that include all matters of professional, economic and social interest that affect the members of the Corps, analogous to that provided for in article 94 of Organic Law 9/2015 in relation to the Police Council, which the complainant entity constantly insists on offering as a parameter or element of contrast.

43. In any case, it must be denied that their observations are taken into account in the working groups, commissions and plenary sessions. Perhaps the most paradigmatic example is the intensity of the debates that took place in the second half of 2022, from July to December of that year, in the seven working groups that were held to prepare the proposal for the draft bill to amend the Law on the Civil Guard Personnel Regime. So much so, that the Administration's initial report was submitted by the professional associations representing the Guardia Civil to the tune of 267 observations, which, after discussion in the face-to-face working groups, some were rejected and others totally or partially accepted, but all of them were answered and argued to the proposers and the rest of the participating associations. This work involved meetings that lasted more than 25 hours and resulted in a 111-page document, which demonstrates the intense work carried out jointly by the Administration and the professional associations.

44. In the sphere of the Civil Guard, it should be added that, in addition to the consultation carried out in the Council, given the territorial deployment of its units, unlike the operational deployment of the military units of the Armed Forces, the Directorate General promotes regular dialogue between the heads of the largest units, In the last 2023 year, 60 commanders of the aforementioned levels held a total of 112 meetings to discuss specific professional issues in these territorial areas.

45. Furthermore, EUROMIL argues that the composition and functioning of the AG Council does not provide effective avenues for dealing with matters of mutual interest; for example, when a disagreement arises and a vote is taken, the matter is finally decided by the chairperson of the body, a government appointee. It also refers to the frequent vetoing of proposals in the Council of the AG, which clearly limits the scope of discussions within the Council. And the fact that the Administration, representing the State, holds the majority limits the influence of the Civil Guards in determining their working conditions.

46. In relation to these issues, which are exactly reproduced in the regulation and functioning of the Police Council, it should be specified that it is not true that the composition of these bodies is not parity. In particular, with regard to the Civil Guard Council, Article 53 of Organic Law 11/2007 states:

They are members of the Civil Guard Council:

a) Representing the members of the Guardia Civil: members elected by the members of the Institute by personal, free, direct and secret ballot. 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 Guards in active service in that scale.

b) Representing the General State Administration: the members appointed by the Ministers of the Interior and Defence, up to the same number of representatives as those elected by the members of the Institute.

47. Obviously, as in all the collegiate bodies of the Spanish Public Administrations, in the event of a tie in a vote, the casting vote of the President, who is always the head of an administrative body, decides. However, this in no way limits the possibilities of discussing matters within the Council's competence. The administration is always open to dialogue with

the representatives of the members of the Security Forces and Corps, but it cannot, in the event of disagreement, renounce the exercise of the regulatory power and the executive function that it is constitutionally attributed (Article 97 of the Constitution). The same applies in the general area of the civil service.

48. In this regard, going beyond the Council itself, since 2021 the professional associations of the CIVIL GUARD have challenged before the contentious-administrative jurisdiction a total of 48 general provisions, service instructions and resolutions discussed in the Council, with different results. This shows that, regardless of their participation in the Council or through meetings with the heads of unit, they also have and freely use the judicial avenue to challenge in court those decisions with which they disagree, some of which have had a major impact on the institution.

49. By way of example, the appeal filed by the Unified Association of Civil Guards (AUGC), in the judgement of the Supreme Court, Contentious-Administrative Chamber, 4th Section, no. 350/2019, of 15 March, which annulled Royal Decree 848/2017, which approved the regulations governing the posting of Civil Guard personnel, paralysing the system for the provision of posts in the system for the posting of Civil Guard personnel.No. 350/2019, of 15 March, which annulled Royal Decree 848/2017, which approved the regulations governing the posting of Civil Guard personnel, paralysing the system of posting in the Civil Guard for months, until the approval of a new regulation, with the consequences that this had on the mobility of personnel and the coverage of units.

50. EUROMIL asserts that the objectives pursued through collective bargaining do not interfere with legislative or governmental functions relating to relations with CIVIL GUARD representatives.

51. This is certainly the case. The lack of agreement cannot condition, we must insist, the exercise by the state or autonomous governments with security powers, nor the regulatory power, nor the executive -directive- function constitutionally attributed to them. The ultimate responsibility and decision on the content of the regulatory provisions and acts adopted by the Administration in the field of the State Security Forces and Corps, and therefore in that of the CIVIL GUARD, as well as in the SAF and the other regional security forces, lies solely with the governments of these administrations, after hearing the associations and trade unions, where appropriate.

52. EUROMIL also states that trade unions representing civil servants or police forces such as the National Police, regional police forces and local police forces, which also share responsibilities in critical areas of protecting rights, maintaining public order and guaranteeing national security, are not limited in their enjoyment of the right to collective bargaining.

53. The complainant insists on trying to establish qualitative differences between the participation of the professional military associations of Civil Guards - and of members of the Armed Forces - in determining the working conditions of members of the Institute and the participation that, for the same purposes, trade union representatives of other security forces (National Police, regional police forces and local police forces) have. Well, as specified above, the matters to which the functions of the Council of the Civil Guard extend (article 54 of Organic Law 11/2007) are analogous to those included among the functions of the Council of the National Police (article 94 of Organic Law 9/2015) or, for example, among the functions of the Police of the Generalitat of Catalonia (article 53 of the Law of the Parliament of Catalonia 10/1994, on the Police of the Generalitat-Mossos d'Esquadra).

54. EUROMIL adds that in operational areas, associations representing members of the Guardia Civil should have unhindered access to participate in discussions on social, economic and professional matters. Acceptance of this claim would constitute an exacerbation of the role of professional associations. Operational areas or areas affecting the deployment of the Civil Guard are excluded from discussion with the professional associations, just as they are excluded from the participation of trade union representatives of the various civilian police forces. All operational or deployment issues ultimately affect individual members of these police forces. If, with this argument, operational issues were to be debated within the collegiate bodies in which the professional associations of Civil Guards or police unions are represented, even if this debate were limited to economic, social or professional issues, they would be indirectly giving them access to matters that are absolutely excluded from social debate in any security force, be it civil or military, Spanish or from another country.

4.3.- Exemption from court costs and deduction of trade union dues

55. Both issues alleged by the claimant lack any validity in order to support a possible violation of Articles 5 and 6 of the SSC by the system of professional associationism in the Armed Forces and the Security Forces, since such advantages or tax benefits in no way form part of the basic essential core that makes up the exercise of the right to freedom of association.

56. In any case, in both alleged situations it can be seen that it is a right or benefit recognised to the worker and, therefore, not directly to the trade unions.

57. In short, these are issues that do not undermine the social dialogue between the Administration and the professional associations of military and Civil Guards, without prejudice to the fact that the Ministries of Defence and the Interior have already promoted before the Ministry of Finance the need to establish the same tax treatment for the dues paid by members of the professional associations of the Armed Forces and the Civil Guard as for the dues paid by trade union members, precisely because of the analogous function that professional associations and trade unions perform and because the former are legally prohibited from forming trade unions - as specific associative entities - for the promotion of their legitimate rights and interests.

4.4.- Activity in military units

58. The prohibition of trade union activities in military units obeys the same parameters of preservation of the military activity that takes place in them and the trade union neutrality that is part of the military statute, so that the distancing of the activity of professional associations from the limits of military units is consistent with that same restriction, in accordance with the 3rd Additional Provision of Organic Law 11/1985, of 2 August, on Trade Union Freedom.

4.5.- Provision of premises

59. The right recognised in article 42 of Organic Law 9/2011 for professional associations to use premises in the Defence Delegations and Subdelegations is based on the need to separate this activity from military units, and is recognised to the same extent as it is recognised for trade unions by article 6 of the Organic Law on Trade Union Freedom.

60. The same equality can be seen with regard to the same right recognised by Article 2 of ILO Convention No. 135 and by Article 81 of Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law, also taking into consideration national case law on location, shared use and equipment.

4..6.- improvements in remuneration

61. EUROMIL refers, under the heading of "recent legal developments", to the Agreement between the Ministry of the Interior, National Police trade unions and professional associations of the Civil Guard for the improvement of the remuneration conditions of the State Security Forces and Corps (published in the Official State Gazette number 69 of 20 March 2018), indicating that its signature represents a recognition of the professional associations of the Civil Guard as trade unions by the Spanish Government.

62. This assertion is totally unfounded. There has been no such recognition, which would simply be *contra legem*. It is just an additional piece of information that proves that the professional military associations of the Guardia Civil have the same possibilities of promoting their rights and legitimate interests as the police unions, despite the associative and non-union nature of these organisations and therefore lacking some of the possibilities of action recognised for trade union organisations. It is important to note that this agreement was reached without resorting to any collective conflict measure, exercising the rights of petition, freedom of expression, demonstration and action that are recognised for professional associations and police unions.

63. The reality is that, on many occasions, the professional associations of Civil Guards act in concert with the trade unions of the National Police Corps to defend the interests of their members (**Annex 1** is attached to demonstrate such concerted action).

4.7.- Hourly credits

64. The recognition of time credits for military professional associations, determined in Ministerial Order 40/2022 of 7 July, are within the ratios established for trade union representatives in Article 41 of the Basic Statute of the Public Employee and in the Workers' Statute itself.

65. EUROMIL specifically refers to a lower allocation of days for the development of their associative activities in the field of CIVIL GUARD with respect to the National Police and, in general, to trade union representatives; specifically, they point out that they only receive 10% of the days allocated to trade union representatives (without specifying which ones).

66. Regardless of the lack of specificity in the complaint, the following table shows the large number of associative representatives and representation days requested by/granted to the representative professional associations to promote and facilitate associative work in the Civil Guard, in accordance with Royal Decree 175/2022, of 4 March, which develops the rights of the professional associations of Civil Guards, their representatives and the members of the Council of the Guardia Civil elected in representation of the members of the Corps, articles 12 and 13. To see the importance of the days granted, this volume is equivalent to the service provided by 1,337 Civil Guards for a month or 111 Civil Guards on a permanent basis for a year, which clearly shows the effort made, at public expense, for the promotion and defence of social, economic and professional interests within the Civil Guard.

2023		
ASSOCIATION	**NUMBER OF REPRESENTATIVES (AS AT 31 DECEMBER 2023)**	**DAYS SPENT ON ASSOCIATIVE FUNCTIONS**
UO	102	1.179
ASESGC	137	2.286
AUGC	845	4.187
JUCIL	326	4.777
AEGC	110	1.962
APCIVIL GUARDC	82	2.160
IGC	119	2.172
TOTAL	**1.721**	**18.723**

4.8.- Observatory of Military Life

67. The allusion or clarification made by the claimant in relation to the citation of the Observatory of Military Life is considered incorrect, since the reference made on page 26, paragraph 49, of the response to the claim is made in the following terms: *collegiate body, of an advisory and consultative nature, attached to the Cortes Generales, for the permanent analysis of the military status and the way in which the State looks after the interests of the members of the Armed Forces. Its members are appointed by an absolute majority of the Congress (5 members) and the Senate (4 members)*, and its functions are listed in paragraph 50.

68. Therefore at no point it can be understood as a "platform for consensus-building and social dialogue" with reference to the Military Life Observatory.

4.9.- International associative activity

69. As regards EUROMIL's claim that it '"objects to the assertion that the provision allowing military personnel and Civil Guards to join similar international associations increases their bargaining power", it should be noted that, as the applicant is aware, a representative of the Ministry of Defence was invited to and attended the forum convened by EUROMIL on 25 May 2022 in Paris. Similarly, the invitation extended by EUROMIL on the occasion of the holding of its 128th General Assembly in Madrid on 26 and 27 October 2023 was accepted and attended. Both events were attended by the professional associations of the affiliated Armed Forces.

70. Consequently, it is clearly perceptible that there are activities at the international level in which there is an increase in the capacity for dialogue and exchange of information with the Ministry of Defence, both of EUROMIL itself and of the aforementioned affiliated professional associations, with the consequent impact on the associative activity carried out by the latter at the national level.

4.10.- Right to strike

71. Finally, EUROMIL considers that "the specificity of the military profession" should not prevent the recognition of the right to strike for Civil Guards, with certain supporting measures.

72. Although this allegation has already been dealt with above, it must be stressed that this prohibition does not only apply to members of the Armed Forces and the General Staff, but also to officers of other police forces.

73. Once again, it must be reiterated that it is not a question of whether or not it would be hypothetically admissible to recognise the right to strike for members of the Armed Forces and the Armed Forces, but whether or not the prohibition of the right to strike for both groups is in accordance with the CSEr, a question that has been widely examined and reported on.

74. Suffice it to recall at this point that the prohibition of the exercise of the right to strike with respect to both groups of a military nature, in addition to complying with the requirements of legal provision and legitimate purpose, clearly falls within the margin of appreciation that has been recognised for States in this area, without Spain having transgressed it by means of a disproportionate decision.

75. The prohibition of the right to strike in the case of servants of military bodies or institutes is included in Article 28.1 of the Constitution, as well as in the corresponding organic laws on the rights and duties of members of the Armed Forces and of those belonging to the General Staff, both of which have a legitimate aim that is protected in Spanish law, as has been endorsed by the Spanish Constitutional Court (for example, Judgement 371/1993 of 13 December 1993), and by the European Court of Human Rights (Engel and others case, 8 June 1976).

CONCLUSIONS

1ª.- The exceptions to the exercise of trade union freedom established by Spanish law for members of the Armed Forces and military institutes are in conformity with the Revised Social Charter. They have a legal basis and an adequate legal status that provides them with

sufficient coverage within the framework of our internal system, and its provisions are sufficiently clear and detailed for the groups affected to effectively develop the representation and defence of professional interests.

2ª.- The disputed prohibition finds its justifying context in the framework of some of the legitimate aims listed in Article 11.2 of the ECHR and in Article G) of Part III of the CSEr, specifically, the safeguarding of national defence and public order and security, fundamental components of the broader notion of national security (Article 9.1 of Law 36/2015, of 28 September, regulating the National Security System), which ultimately justifies the classification of the services they provide as "essential", in light of the concept provided by STC 53/1986, of 5 May.

3ª.- The sacrifice that this prohibition entails does not go beyond what is necessary in a democratic society, insofar as the same legal rule that created the restriction has provided an alternative means by which to defend their professional interests and seek to improve their working conditions in all aspects. In this sense, limitations on trade union rights cannot be considered absolute if, at the same time, the legal system recognises the possibility of association.

4ª.-Military professional associations and the Councils are an appropriate channel for the development and expansion of mechanisms for the defence of the social, economic and professional interests of their members, as demonstrated by the progress made since 2007 in the Guardia Civil and in 2011 in the Armed Forces.

5.ª- The objections raised by EUROMIL are limited to a series of purely casuistic assertions, without due evidential support. They do not present nor add any new factual or legal elements which demonstrate the failure to comply with the law of the grounds set out above, nor offers any consistent reasoning which undermines the latter conclusions.

In the light of the above, this party respectfully requests the Committee to consider the present observations in reply to the complainant organisation’s response to our submissions on the merits.

Madrid for Strasbourg, 13 May 2024

The Agent of Spain

Alfonso Brezmes Martínez de Villarreal