



05/04/2023

RAP/RCha/IRL/20(2023)

## **EUROPEAN SOCIAL CHARTER**

Comments submitted  
by the European Organisation of Military Associations  
and Trade Unions (EUROMIL) concerning the 20th  
National Report on the implementation of the European  
Social Charter

Follow-up to Collective Complaints

Comments registered by the Secretariat  
on 5 April 2023

**REPORT FOR FINDINGS 2023**



European Organisation of  
Military Associations and  
Trade Unions

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

## **Observations on the 20<sup>th</sup> National Report on the Implementation of the European Social Charter submitted by the Government of Ireland**

EUROMIL would like to comment on the 20<sup>th</sup> National Report on the Implementation of the European Social Charter submitted by the Government of Ireland, in reference to the decision of the European Social Rights Committee on September 12<sup>th</sup>, 2017, which found Ireland in violation of Articles 5 and 6.2 of the European Social Charter.

### **▪ Ireland's violation of Article 6.2**

EUROMIL acknowledges the Committee's 2020 finding that the situation with regard to Article 6.2 has been brought into conformity. However, EUROMIL wishes to draw the Committee's attention to a recent declaration by the Department of Defence in Ireland that the Representative bodies are not considered "excepted bodies" for the purposes of collective bargaining under the 1941-1942 Industrial Relations Act. This determination is based on the Act's Section 6, which outlines the definition of an "excepted body."

Section 6 of the 1941 Act provides:

- 1) It shall not be lawful for anybody of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiation licence.
- 2) Where anybody of persons acts in contravention of this section, the members of the committee of management or other controlling authority of such body and such of the officers of such body as consent to or facilitate such act shall each be guilty of an offence under this section and shall each be liable on summary conviction thereof to a fine not exceeding €2,500, together with, in the case of a continuing offence, a further fine not exceeding €500 for every day during which the offence is continued.

Section 6(3) of the 1941 Act (as amended) provides that "excepted body" means any of the following bodies:

- a) a body which carries on negotiations for the fixing of the wages or other conditions of employment of its own (but no other) employees,
- b) [repealed - by section 6 of the Trade Union Act 1942]
- c) a civil service staff association recognised by the Minister for Public Expenditure and Reform],
- d) an organisation of teachers recognised by the Minister for Education,
- e) [repealed by the Industrial Relations Act 1976],
- f) a joint labour committee,
- g) a body in respect of which an order under sub-section (6) of this section is for the time being in force, and



European Organisation of  
Military Associations and  
Trade Unions

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

- h) a body all the members of which are employed by the same employer, and which carries on negotiations for the fixing of wages or other conditions of employment of its own members (but of no other employees).

As a result, the Representative Associations can only enter into a collective agreement if they hold a negotiation license under the 1941 Act or are considered an "excepted body" under the same Act.

The Department of Defence has advised the Representative Associations that they are not considered an "excepted body" under the Act. This decision has put the Representative Associations in a tenuous position with regard to collective bargaining for their members.

This situation has only just come to the attention of EUROMIL following a lengthy exchange of correspondence between the representative bodies and the Department of Defence regarding the implementation of Working Time Directive within the Irish Defence Forces.

The exclusion of the Defence Forces' representative bodies constitutes a significant restriction on their ability to effectively conclude binding agreements and appears to be a violation of Article 6.2.

EUROMIL fears that this situation may result in a further collective complaint in the absence of the grant of "excepted body" status by the Minister, as provided for under the Act.

- **Ireland's violation of Article 5**

With regards to Article 5, EUROMIL is aware that the representative bodies have been allowed to associate with the Irish Congress of Trade Unions on a conditional and temporary basis. However, the grant of temporary associate status is disconcerting, especially as no indication has been provided to the representative bodies regarding when the appropriate legislative framework will be put in place and what caveats, if any, may be attached to such grant of associate status in the future.

Despite the lack of certainty over the last year and the anomalous legal restrictions placed on the grant of limited status, no adverse consequences have arisen in the context of state security. In fact, EUROMIL argues that the determination of the Committee and the grant of associate status have enhanced the attractiveness of the Defence Forces and provided the representative bodies with the ability to actively influence the conditions of their members.

Therefore, EUROMIL requests that the legal framework for the grant of associate status be expedited and that any caveats to membership be limited to those absolutely necessary, reasonable, and proportionate to the aim to be achieved.