



19/05/2020

## **EUROPEAN SOCIAL CHARTER**

Comments by the European Organisation of  
Military Associations and Trade Unions  
(EUROMIL) on the 17th National Report on  
the implementation of the European Social  
Charter

submitted by

### **THE GOVERNMENT OF IRELAND**

Follow-up to collective complaints:

No. 83/2012, No. 100/2013, No. 110/2014, No. 112/2014

Report registered by the Secretariat on

7 January 2020

**CYCLE 2019**





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**Submission by the European Organisation of Military Associations and  
Trade Unions (EUROMIL) on the  
17<sup>th</sup> National Report of Ireland  
on the implementation of the European Social Charter**

**UPDATE ON STATUS OF PDFORRA VIS A VIS COLLECTIVE BARGAINING  
RIGHTS AND RIGHTS OF REPRESENTATION**

**Introduction**

EUROMIL, on behalf of PDFORRA, sincerely welcomes this opportunity to update the European Committee of Social Rights (ECSR – or here below referred to as the Committee) on developments, or lack thereof, in respect of the Decision of the Committee on the complaint EUROMIL v. Ireland (112/2014), where it found violations of the Articles 5 (right to organise) and 6§2 (right to bargain collectively) of the European Social Charter on 12 September 2017.

Potentially, in contemplation of the findings of the Committee in 2017, the Minister with Responsibility for Defence, Mr Paul Kehoe announced a review of the Conciliation and Arbitration Scheme (C&A Scheme) for members of the Irish Defence Forces. Following the publication of the Terms of Reference, PDFORRA, in light of the recommendations of the Committee, sought the inclusion of the finding of the ECSR in the Terms of Reference for the Independent Review body- This was subsequently agreed by the Minister.

Following the commencement of the aforementioned review, all parties to the current C&A Scheme were invited to make submissions to the Chairman of the Independent Review body. PDFORRA made a number of observations on the C&A Scheme and again sought permission to Associate with the Irish Congress of Trade Unions (ICTU).

The Independent Review was undertaken by Mr Gerard Barry, who published his final report in October 2018. Numerous recommendations were made regarding the amendment of the C&A Scheme; additionally, he made a recommendation that the potential grant of Association by PDFORRA to ICTU be investigated further by the Department of Defence in conjunction with officials from the Irish Congress of Trade Unions.

Thereafter, PDFORRA and officials from ICTU constructively engaged with the Department of Defence and military management. However, it is worthy to note that the Chief of Staff of the Defence Forces has strenuously rejected the idea of allowing PDFORRA to be granted Associate status of ICTU. This is despite the explicit recognition within military management's submission to Mr Gerard Barry during the course of the aforementioned review that PDFORRA's claim has been bolstered by its treatment during the most recent pay talks in 2017. Quoting



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directly from the submission made by military management to the Review Body, they acknowledged that:

*"It is the position of ICTU and its engagement directly with DPER that determines the outcomes of the national pay agreements" and that it, **military management, considered** "real negotiations were conducted behind closed doors", which "effectively strengthened PDFORRA's view that it would be more advantageous to be affiliated to ICTU".*

In order to dispel any potential belief that ICTU would not accept PDFORRA's application for Associate status, the Association formally applied to the Irish Congress of Trade Unions for membership on 31 July 2019. The General Secretary of Congress subsequently announced on 20 September 2019 that PDFORRA's application had been accepted in principle, subject to confirmation by the Minister for Defence.

At a political level, support for the grant of Association to ICTU has grown exponentially since the findings of the Committee were published. As previously notified to the Committee, Deputy Michael McNamara TD, published a Private Members Motion that was widely supported by members of the Irish Parliament. Subsequently, two Private Members Motions was initiated by the leading opposition party, Fianna Fail, which garnered the support of the majority of parliamentarians.

Shortly before the recent General Election, the Taoiseach of Ireland, Leo Varadkar TD, in an interview given to the Cork Examiner newspaper, announced that he would welcome the association of PDFORRA to ICTU.

Presently, PDFORRA is awaiting the formation of Government in order to advance its claim for the grant of Associate status to the next Minister for Defence.

### **Timeline of events**

- October 2014– submission of Complaint n° 112/2014 by EUROMIL to ECSR.
- February 2015- Private Members Motion to Irish Parliament by Deputy Michael McNamara TD.
- 13 April 2017- Initiation of Bill to provide for grant of trade union status.
- 20 June 2017- Initiation of Bill to provide for grant of trade union status.
- October 2017- Announcement of Review of C&A Scheme for members of the Defence Forces.
- February 2018- Findings of ECSR made public.
- October 2018- Publication of Independent Report on Conciliation and Arbitration Scheme by Mr Gerard Barry- with recommendation for investigation of possible affiliation between PDFORRA and ICTU.



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- 12 June 2019- Private members motion passed by majority of 77- 38. This motion included a provision for the grant of Association of ICTU to PDFORRA.
- 27 June 2019- PDFORRA appearance before Joint Committee on Foreign Affairs, Trade, Tourism and Defence.
- July 2019- announcement by Public Service Pay Commission of recommendations regarding pay of members of the Defence Forces.
- 31 July 2019- Application by PDFORRA for the grant of associate status of ICTU.
- September 2019- Exchange of correspondence between PDFORRA and Dept of Defence on issue of grant of Associate status with ICTU.
- 20 September 2019- Acceptance in principle by ICTU of application for Associate status by PDFORRA.
- October 2019- Purported date of implementation of High Level Implementation Plan of findings of Pay Commission- To date these remain un-implemented.
- 11 December 2019- Tendering of list of considerations by Department of Defence on behalf of then Minister with responsibility for Defence to PDFORRA.
- January 2020 - Fall of Government and lacuna in exchange of correspondence/ talks.- Caretaker Government principles applying.

### **Further Considerations**

During the most recent pay talks<sup>1</sup>, provision was made for the convening of a Public Service Pay Commission for those areas most impacted by the crisis in recruitment and retention within the public service.

The two areas of the public service given the highest priority were Health and Defence. The recommendations of the Public Service Pay Commission related to the Health area published in August 2018, with the findings in relation to Defence released in July 2019.

Firstly, it is worthy of note that the Pay Commission announced that it was not permitted to go beyond the terms of the most recent national pay agreement<sup>2</sup>. In the foregoing context, it is important to state that "side deals" were agreed between other areas of the public sector and government during National Pay Talks

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<sup>1</sup> Public Sector Stability Agreement 2018-2020

<sup>2</sup> Report of the Public Service Pay Commission, May 2019, P. 2



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in 2017. PDFORRA were informed during the aforementioned “parallel discussions” at the national pay talks that this would not occur.

Secondly, legislation published to underpin the Public Sector Stability Agreement 2018-2020<sup>3</sup>, had the potential to impact sectors that did not agree to the terms of the agreement through the withholding of increases and increments for specific durations. Bodies who were under the umbrella of ICTU and who may have voted against the agreement, but by virtue of their membership of ICTU who accepted the agreement, would not be subject to the aforementioned increment freeze etc<sup>4</sup>. This placed members of PDFORRA in an invidious position, as they have no right to withdraw their labour and would have been subjected to punishment without recourse to any dispute mechanism.

Thirdly, the dispute resolution body overseeing the Public Sector Stability Agreement 2018-2020 has no representatives from the armed forces.

There has been widespread disappointment among members of the Defence Forces at the findings of the aforementioned Pay Commission and recommendations made within its report have not been implemented in the intervening period.

However, one of the “side deals” agreed between SIPTU and Government, agreed during the national pay talks in 2014, regarding a job evaluation process for its workers has been implemented during the intervening period. This process is in all respects very similar to a review of technician pay for members of PDFORRA. The aforementioned review was scheduled to take place initially in 2007- 2008, and again following a major re-organisation of the Irish Defence forces in 2013-2014. Subsequently, this review was mooted by the Public Service Pay Commission to be finalised by October 2019. However, it remains un-implemented and under consideration by Government.

Moreover, PDFORRA was forced to undertake legal action, as the mechanism for the payment of outstanding independent adjudications, which were part of the national pay talks, was never agreed in advance of the decision to only pay these awards with effect from October 2018. Consequentially, PDFORRA has had to resort to a number of court actions and petitions to the Committee for Freedom of Association of the International Labour Organisation.

The foregoing, in EUROMIL’s estimation, reinforces PDFORRA’s complaint under Articles 5 & 6.2 of the European Social Charter.

PDFORRA has found the purported “parallel process” in national pay talks falls far short of a genuine effort at negotiation. Moreover, complementary legislation has further disenfranchised members through effectively denying them the ability to demonstrate their dissatisfaction with current pay rates and conditions without penalisation.

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<sup>3</sup> Public Service Pay and Pensions Act 2017

<sup>4</sup> Public Service Pay and Pensions Act 2017 s.3



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Additionally, it must be remembered that the Public Service Commission themselves recognised their lack of ability to provide for adequate pay rates, as they were effectively debarred from increasing these.

## **Conclusion**

The decision of the European Committee of Social Rights in the case of EUROMIL v. Ireland 112/2014, represented a watershed moment for members of armed forces throughout Europe. The delay by the Irish Government in permitting PDFORRA to Associate with ICTU has undermined the trust - and confidence of members of armed forces to secure appropriate representation within society. Additionally, difficulties faced by individuals in claiming their rights contribute to the widespread distrust of governing institutions. Which value has an international decision if not respected and implemented at national level?

EUROMIL views the grant of permission of affiliation between PDFORRA and ICTU as vital to securing the economic and social interests of the enlisted members of the Irish Defence Forces. This view is, ironically given the stance take recently in the press, validated by the Irish military authorities' recognition of the treatment of PDFORRA during the most recent national pay talks in 2017.

PDFORRA's desire to affiliate and the Irish Congress of Trade Unions acceptance in principle of their application illustrates the recognition by civil society of the need for proper representation for members of armed forces generally.

PDFORRA for its part has supplied the Irish government with any and all assurances asked for in consideration of the grant of Associate status to ICTU. This includes an automatic withdrawal of the right of affiliation where deemed necessary by Government, declarations that it will not seek the right to strike, which it deemed unnecessary given the findings of the Committee and the acceptance of Associate status with ICTU in lieu of the greater rights and entitlements afforded by Affiliate status.

EUROMIL views the pronouncements by the Irish military authorities in recent press statements as without foundation, especially as the same arguments have all been advanced within the submission by the Irish Government in their response to EUROMIL's complaint in 2016.

Little doubt can exist that Europe faces both economic and societal challenges in the coming months and years. Members of armed forces throughout Europe will, like all workers, face the burden of economic recovery. Social partners throughout Europe will be at the frontline of developing recovery programmes. Therefore, there exists a real need for members of the armed forces to have a strong representative voice and be allowed to contribute through their input into these economic recovery programmes. This may only be achieved through well-regulated social dialogue and collective bargaining systems. As like their fellow European citizens they live in a real society.



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EUROMIL respectfully requests that the committee continues to find Ireland in breach of Articles 5 and 6.2, until such time as the grant of Associate status to ICTU is given to PDFORRA.