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EUROPEAN SOCIAL CHARTER

Response by the Government of Ireland to
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 28 June 2023

REPORT FOR FINDINGS 2023

**Replying observations of Ireland to
EUROMIL comments on Ireland's 20th
National Report under the revised
European Social Charter**

28th June 2023



This is Ireland’s response to the comments submitted to the European Committee of Social Rights by EUROMIL on Ireland’s 20th National Report on the implementation of the European Social Charter.

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Article 5: Right to Organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom.

The extent to which the guarantees provided for in this article shall apply to the police, shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

EUROMIL Comment

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.

Response

Both Defence Forces Representative Associations - the *Representative Association of Commissioned Officers (RACO)* and *Permanent Defence Forces Other Ranks Representative Association (PDFORRA)* - sought associate membership with the Irish Congress of Trade Unions (ICTU) for the purpose of being involved in central public sector pay negotiations.

The Minister for Defence provided his conditional temporary consent to both Representative Associations for associate membership, solely for the purpose of participation in national pay negotiations under the ICTU umbrella, in mid-2022.

The Department of Defence continues to work on a legislative solution to ensure a longer-term facilitation of this by Government to ensure that, ultimately, the State's ability to control and direct its Armed Forces remains absolute and that any eventual solution retains that certainty.

Article 6§2: Right to Bargain Collectively

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

EUROMIL Comment

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
- 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.

Response

This matter, of 'excepted body' status, has been raised by both RACO and PDFORRA under discussions regarding the implementation of the Working Time Directive in the Defence sector, which are currently ongoing between Civilian-Military Management in the Defence Organisation and the Defence Forces Representative Associations under

the Working Time Directive Sub-Committee of the Defence Sector Conciliation & Arbitration (C&A) Scheme.

Discussions under the C&A Scheme are confidential to the parties concerned.

As part of these discussions in this confidential format, this material was compiled in conjunction with internal Governmental stakeholders and provided to the Representative Associations on a without prejudice basis under that process.

In the opinion of the Department of Defence, the inclusion of this material in the EUROMIL submission is a contravention of the spirit and the principle under which all parties have agreed to under the Defence Sector Conciliation & Arbitration Scheme, and:

1. should not have been provided to EUROMIL, and
2. should not have been included by EUROMIL in its submission.

The Department of Defence has reminded both Representative Associations of their responsibilities in this regard.

Ireland remains fully committed to ensuring that the provisions of the Working Time Directive are applied, where appropriate, to the Defence Forces.

This is in line with the government commitment to remove the blanket exemption in the Organisation of Working Time Act, 1997 for both the Defence Forces and An Garda Síochana, and the recommendations in the Commission on the Defence Forces.

The health and safety of personnel in the Defence Forces, as enshrined in the Directive, remains an absolute priority, and Ireland's Deputy Prime Minister has recently directed both Department of Defence officials and military management to progress to implementation as soon as possible.