



European Organisation of
Military Associations and
Trade Unions

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

EUROMIL Contribution to the UPR 47th Session, Portugal

April 2024

The European Organisation of Military Associations and Trade Unions (EUROMIL), which was established in 1972, is an umbrella organisation composed of 37 military associations and trade unions from more than 20 countries. It is the main Europe-wide forum for cooperation among professional military associations on issues of common concern. EUROMIL strives to secure and advance the human rights, fundamental freedoms, and socio-professional interests of military personnel of all ranks and promotes the concept of "Citizen in Uniform". As such, a soldier is entitled to the same rights and obligations as any other citizen.

While reviewing the fulfilment of Portugal of its human rights obligations and commitments, EUROMIL would like to draw the attention of the UPR Working Group to the following issues affecting personnel of the Portuguese armed forces.

- Background

The right to freedom of association for military personnel in Portugal was initially recognised in 2001 by the Organic Law 3/2001, known as the "Law on the Right of Military Professional Association".ⁱ This was further elaborated in Organic Law 4/2001 on National Defence and Armed Forces, which imposes restrictions on the right to organise for military personnel and their representatives by prohibiting activities of a trade union nature.ⁱⁱ Portuguese military associations operate under the Law-Decree 295/2007, of 22 August, namely the "Statute of Association Leaders", defining the rights and duties of leaders of associations.ⁱⁱⁱ However, the legal framework imposes significant restrictions, prohibiting activities of a trade union nature and denying military personnel the right to bargain collectively. Despite provisions in the law that allow military professional associations to be heard, in practice, associations are rarely consulted.

Specifically, although Organic Law 4/2001 on National Defence and Armed Forces foresees the right for military associations to be heard on the issues of the professional, remuneration and social status of their members, this provision has not been implemented in practice, resulting in a lack of social dialogue. Portugal does not promote joint consultations between the members of the armed forces and the Ministry of Defence, as a public service employer, lacking any machinery for voluntary negotiations in order to regulate working conditions through collective agreements.

Additionally, the Armed Forces Military Statute, Decree-Law 90/2015, of 29 May, amended by Law 10/2018, of 2 March, does not provide any right of representation and collective bargaining to the members of the armed forces as



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public employees.^{iv} Therefore, military personnel are not treated equally as members of other public services, especially security forces. Notably, judges, public prosecutors, as well as personnel of the Public Security Police (PSP) or the National Republican Guard (GNR) – a military security force - are granted certain rights, including trade union rights, which are denied to members of the armed forces.

While acknowledging that Portugal may choose to regulate the right of members of the armed forces to organise by a mechanism applicable only to the military, such entitlement may not deprive military representative associations from expressing their demands on working conditions and pay in an appropriate and effective manner.

As a result, Portuguese legislation places restrictions on the right to organise for military personnel and their representatives by prohibiting activities of a trade union nature. However, this limitation is not considered as being proportionate and necessary in a democratic society. While restrictions on military personnel's rights may exist, they should be interpreted restrictively, according to human rights jurisprudence.

Therefore, EUROMIL wishes to draw attention to the ban on members of the Portuguese armed forces from establishing trade unions, engaging in trade union activity, and exercising the right of collective bargaining.

- Violations of International and European Standards

Trade union rights are enshrined in various international instruments including Article 8 of the **International Covenant on Economic, Social and Cultural Rights**, Article 22 of the **International Covenant on Civil and Political Rights**, and Conventions No. 87 and 98 of the **International Labour Organization**.

At the European level, such rights are protected by Articles 12 and 28 of the **European Charter of Fundamental Rights**, Articles 5 and 6 of the revised **European Social Charter** and Article 11 of the **European Convention on Human Rights**, which safeguards trade union freedom as an aspect of freedom of association. The right to bargain collectively is considered an essential element of the “right to form and to join trade unions for the protection of [one’s] interests”.

These rights apply to members of the armed forces under international standards and legislation, with some restrictions being foreseen to balance rights and service requirements. However, it should be emphasized that human rights jurisprudence considers that these limitations should be interpreted restrictively and surely not serve as justification for imposing blanket bans on military personnel’s rights.



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- Undertaken Actions

In response to these issues, EUROMIL has introduced a collective complaint against Portugal. This complaint mechanism is foreseen within the European Committee of Social Rights of the Council of Europe. The mentioned complaint alleges that Portuguese professional military associations are denied trade union rights and are therefore banned from collectively representing their members and making binding agreements, in violation of Articles 5 and 6 of the revised European Social Charter.^v

- Conclusions and Recommendations

Considering the violations outlined and the legal frameworks involved, EUROMIL recommends that Portugal align its national legislation with international human rights standards regarding the rights of military personnel to freedom of association and collective bargaining.

Portugal should allow military personnel to engage in trade union activities and collective bargaining, so as to ensure that military professional associations are actively consulted and allowed to advocate for the interests of their members.

Addressing these violations is crucial for upholding human rights principles and ensuring equal treatment for all citizens, including members of the armed forces.

ⁱ Lei Orgânica No. 3/2001, de 29 de Agosto (Lei do direito de associação profissional dos militares), <https://ans.pt/files/2016/07/Lei-do-direito-de-associacao-profissional-dos-militares.pdf>.

ⁱⁱ Lei Orgânica No. 4/2001, de 30 de Agosto (Lei de Defesa Nacional e das Forças Armadas), <https://diariodarepublica.pt/dr/detalhe/lei-organica/4-2001-631839>.

ⁱⁱⁱ Decreto-lei No. 295/2007, de 22 de Agosto, <https://files.dre.pt/1s/2007/08/16100/0558005582.pdf>.

^{iv} Decreto-Lei No. 90/2015, de 29 de Maio, <https://diariodarepublica.pt/dr/detalhe/decreto-lei/90-2015-67348942>.

^v Collective Complaint No. 199/2021 European Organisation of Military Associations and Trade Unions (EUROMIL) v. Portugal, <https://www.coe.int/en/web/european-social-charter/-/no-199-2021-european-organisation-of-military-associations-and-trade-unions-euromil-v-portugal>.