



EUROMIL Contribution to the UPR
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About EUROMIL

Founded in 1972, the European Organisation of Military Associations and Trade Unions (EUROMIL) is an umbrella organisation composed of 32 military associations and trade unions from 21 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 in Europe and promotes the concept of “Citizen in Uniform”. As such, a soldier is entitled to the same rights and obligations as any other citizen. The organisation is an ECOSOC-accredited NGO.

Human rights of members of the armed forces in Ireland

1. While reviewing the fulfillment of the human rights obligations and commitments of Ireland, EUROMIL would like to draw the attention of the UPR Working Group on the following issues affecting the service members of the Irish defence forces:

1. The right to freedom of association in the Irish defence forces

2. The first issue relates to the right to organise and associate, collective bargaining and representative association or trade union membership, which are provided by the UDHR Art.20 and Art.23 (4), ICCPR Art.22, ICESR Art. 8 as well as by ILO Conventions 87, 98 and 154. At European level, the right to freedom of association is foreseen in the European Convention on Human Rights Art.11, in the European Social Charter Art.5 and Art.6 and in the EU Charter of Fundamental Rights Art. 12. Unfortunately, Irish military personnel do not fully exercise their right to organise and bargain collectively.

3. Sec.103 of the Irish Defence Acts (1954 as amended) states that “a member of the Permanent Defence Force (PDF) shall not join, or be a member of, or subscribe to, any political organisation or society or any secret society whatsoever”. The 1954 Act defines a secret society as “an association, society or other body the members of which are required by the regulations thereof to take or enter into, or do in fact take or enter into, an oath, affirmation, declaration or agreement not to disclose the proceedings or some part of the proceedings of the association, society or body”. The Act also sets out a sworn declaration that all members must take before being permitted to be commissioned or enlist into the PDF.

4. In 1990, an amendment to the Defence Act provided for the establishment of three representative associations and consequently the Representative Association of Commissioned Officers (RACO), the Permanent Defence Force Other Ranks Representative



Association (PDFORRA) and (Reserve Defence Force Representative Association) RDFRA were established in 1991 with the implementation of Defence Force Regulation (DFR) S.6. The three of them are nowadays members of EUROMIL. This Statutory Instrument gave effect to the amended Act and governs, inter alia the establishment, funding, and operation of representative associations in the PDF. DFR S.6 also set out the ‘the Scope of Representation’ which includes inter alia remuneration, superannuation, and a wide range conditions of service for military personnel.

5. Under the DFR, representative associations require the approval of the Minister for Defence to affiliate with other bodies. Significantly, they have not been permitted to join as a full or associate member of the Irish Congress of Trade Unions (ICTU).

6. There were 44 trade unions affiliated to Congress in 2017 with a total membership of 723,976, of whom 527,048 are in the Republic of Ireland and 196, 928 are from Northern Ireland¹. Of this number in the republic, just over 300,00 are public service workers. With such large numbers, ICTU formed a Public Services Committee² to coordinate and lead ICTU’s negotiations at centralised national pay talks. Since the introduction of ‘one size fits all’ pay talks in the 1990s and in the entirety of representative associations’ existence, this body and ICTU, due to their size, have and will continue to dominate national pay negotiations.

7. While not permitted access to ICTU membership of any kind, representative associations have been permitted to affiliate fully with EUROMIL and the Irish Conference of Professional and Service Associations (ICPSA). Statutorily, this latter association is similar to ICTU, in that it may nominate up to seven candidates to the Labour Panel of *Seanad Éireann*, the upper house of the *Oireachtas*, which also comprises of the President of Ireland and Dáil Éireann (Parliament). Unlike ICTU, ICPSA membership is relatively small (circa 26,000 combined membership) and it does not directly interact with Government or Government Departments, nor does it play any central roles in collective national pay talks, industrial relations or dispute resolution mechanisms.

8. Under the Defence Act and DFR A.7 (Discipline), it would be deemed an offence to participate in any form of industrial action or refuse to carry out a lawful order. Additionally, national employment legislation which regulates industrial relations disputes and protections for Trade Unions does not apply to members of the PDF.

9. RACO, as a volunteer³, hierarchical and disciplined military organisation responsible for the defence and security of the Irish State, RACO accepts that certain qualified restrictions are placed on members of the military. RACO does not accept that such restrictions should be taken for granted and that military remuneration and superannuation must attract a premium to compensate those that forego normal employment rights and civil liberties while in service.

10. PDFORRA requests the grant of associate status to ICTU and believes it is a human right that would enhance the lives and livelihoods of members of the Defence Forces. Moreover, PDFORRA continues to assert that the grant of associate status to ICTU is reasonable, proportionate and necessary to allow members to protect their pecuniary interests.

¹ Affiliated Unions & Trades Councils » About Congress » Congress - Irish Congress of Trade Unions (ictu.ie)

² Congress Committees » About Congress » Congress - Irish Congress of Trade Unions (ictu.ie)

³ Conscription for military service has never been imposed in Ireland.



11. In 2014, EUROMIL, on behalf of PDFORRA submitted a complaint to the European Committee of Social Rights (ECSR) alleging violations of Articles 5 & 6 of the European Social Charter, inasmuch as the Irish Government had not permitted PDFORRA to associate with the Irish Congress of Trade Unions (ICTU). These allegations pertained to the right to freedom of association and the right to bargain collectively. Both complaints were upheld unanimously by the ECSR.

12. Despite the positive ruling, the Irish Government has failed to allow PDFORRA the freedom to associate with ICTU, whom the Committee recognised as having more bargaining power during national pay agreements by virtue of its size. At the Council of Europe level, the European Court of Human Rights ruled in the seminal case of *Matelly v. France*, in 2014, that members of the Armed Forces should be allowed to join trade unions and umbrella groups for the protection of their pecuniary interests.

13. Moreover, PDFORRA believes that the Irish Government has recently mooted the establishment of a permanent pay review body, which, potentially, could effectively diminish further the rights currently held by serving personnel.

14. EUROMIL further contests that the principle of allowing staff associations from themselves joining umbrella groups is set out in ILO Conventions. The fact that workers and employers shall have the right to establish and join organisations of their own choosing implies for the organisations themselves the right to establish and join federations and confederations of their own choosing.

15. The impact of the failure of government to allow to PDFORRA the right to associate to ICTU was keenly felt by members represented by PDFORRA during national pay talks that were held in late 2020. Despite assurances that a parallel process would be undertaken between non-ICTU members and the Department of Public Expenditure and Reform, the final agreement failed to recognise the historical pay cuts imposed upon members of PDFORRA as part of the Public Service Stability Agreement 2013, in a similar manner to those of ICTU members. Arising from the failure of Government to grant PDFORRA associate status, the Association was forced to commence legal action through the domestic courts in 2020.

2. Exclusion from scope of the Irish Human Rights and Equality Act 2104

16. The principles of equality and non-discrimination are provided in international standards and legislation, including ICCPR Art. 26. In 2014, the Irish Human Rights and Equality Commission Act brought into force. This legislation specifically excludes members of the Defence Forces from its scope. Indeed, Section 2 of this Act defines “public bodies” as:

“(a) a Department of State (other than, in relation to the Department of Defence, the Defence Forces) for which a Minister of the Government is responsible,”

17. PDFORRA believes that the wholesale exclusion of the Defence Forces from the scope of the legislation is unreasonable and unjust. The exclusion of members of the Defence Forces from the scope of the Act impacts on personnel insofar as, Section 42 of the Act requires all other public bodies to:



- “(a) eliminate discrimination,
- (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
- (c) protect the human rights of its members, staff and the persons to whom it provides services.”

18. The exclusion of members the Defence Forces from the scope of the D2014 Act appears especially unwarranted when one considers the remit of the Commission is to:

- (a) to protect and promote human rights and equality,
- (b) to encourage the development of a culture of respect for human rights, equality, and intercultural understanding in the State,
- (c) to encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in the State and respect for the freedom and dignity of each person, and
- (d) to work towards the elimination of human rights abuses, discrimination and prohibited conduct.

19. EUROMIL contests that while many protections for members of the Irish Defence Forces may be enshrined within other pieces of domestic legislation, the fact that the Irish Human Rights Commission does not have oversight of the actions of the Defence Forces, or members cannot rely upon the Commission for assistance, is damaging and impacts directly on the lives of members.

3. Conscientious Objection within the Irish Defence Forces

20. The right to conscientious objection is provided for through UDHR Art. and ICCPR Art. 18. However, it is not fully exercised by members of the Irish defence forces. The fact that members of the Irish Defence Forces are exempted from the scope of the Irish Human Rights and Equality Act of 2014, arose following the submission of a claim by PDFORRA to the Department of Defence seeking the introduction of a mechanism whereby personnel serving within the Irish Defence Forces could discharge on grounds of conscientious objection.

21. Following the clarification by the Irish Human Rights Commission that Defence Forces personnel were excluded, EUROMIL, on behalf of PDFORRA, submitted a claim to the European Committee of Social Rights (ECSR) seeking provision for the introduction of a measure to allow for discharge on conscientious objector grounds. This complaint was taken on the limited scope provided within Article 1 of the European Social Charter. Unfortunately, the Committee was unable to find in EUROMIL’s favour.

22. However, EUROMIL continues to maintain, premised recognition of UN Human Rights Commission Resolution 1998/77 that members of the Irish Defence Forces remain entitled to have their voluntary discharge registered as being on grounds of contentious objection should they so wish.



23. Moreover, the foregoing right to be registered as a contentious objector has resulted in call on member states by the Parliamentary Assembly of the Council of Europe to:

“[i]ntroduce into their legislation the right to be registered as conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted status of conscientious objector”⁴

24. The United Nations Human Rights Commission, having considered the report of the Secretary-General (E/CN.4/1997/99), resolved:

“[t]hat conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives,

Aware that persons performing military service may develop conscientious objections...

(1) Draws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.

(3) Calls upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;”

25. Premised upon the foregoing Resolutions and Recommendations, PDFORRA, through EUROMIL sought the amendment of DFR A.10, and the establishment of an independent body in accordance with the recommendations made by the OSCE⁵ to determine applications for discharge on grounds of conscientious objection by members of the Permanent Defence Forces.

To date, while members of the Irish Defence Forces can discharge voluntarily, no provision exists for members of the Irish Defence Forces to be registered as contentious objectors.

26. EUROMIL contests that the right to discharge and to have one’s discharge registered on the grounds of contentious objector grounds is a human right that must be recognised within the Irish Defence Forces. Presently, many members of armed forces are faced with the prospect of having to be vaccinated. In some instances, personnel faced with the prospect of compulsory vaccination may seek to register their objection to vaccination on grounds of religious ethos. In circumstances where conflicts of conscience exist, members of armed forces must be permitted to have their objections registered in a manner that maintains human dignity and respect for the individual.

⁴ Council of Europe Parliamentary Assembly Recommendation 1742(2006)

⁵ OSCE/ ODIHR “Handbook on Human Rights and Fundamental Freedoms of Members of Armed Forces Personnel” (2008)



4. Working time in the Irish defence forces

27. The right to rest and leisure, including reasonable limitation of working hours is foreseen in UDHR Art. 24, ICESCR Art. 7 and ILO conventions. At European level, it is also recognized in the European Social Charter Art. 2 and in the EU Charter of Fundamental Rights Art. 21.

Moreover, the European Union adopted the Framework Directive on Safety and Health at Work and the Working Time Directive (WTD) which provide specific working conditions. However, military personnel are excluded from the protection and benefits of the EU WTD.

28. As stated in a document called “Detailed Report on the Implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time” the European Commission notes that “in a number of Member States, the Directive **does not appear to be transposed correctly, or transposed at all, regarding certain parts of the public service. This applies particularly to the armed forces (...)**”.⁶

29. This is certainly true in the case of Ireland, as the WTD was transposed into Irish legislation by means of the *Organisation of Working Time Act (1997)*. Sec.3 of the 1997 Acts, blatantly states that “this Act shall not apply to a member of the Garda Síochána (Police) or the Defence Forces”. The detailed report also states that “Such exclusions are not consistent with the requirements of the WTD, unless transposition of the Directive’s provisions is ensured by collective agreements”. While An Garda Síochána have, no such collective agreements on derogations or exemption are in place with RACO.

30. Since 2012, the Department of Defence has been aware from legal advice received from the Irish Attorney General that it can no longer rely on Sec.3 of the 1997 Act to exempt members of the PDF. Hence on a daily basis multiple breaches of the WTD continue to exist within the Irish Defence Forces. In additional to the *Organisation of Working Time Act (1997)*, it is worth noting that members of the Defence Forces are exempt other protections under national employment legislation⁷.

31. As the WTD is, above all, about the health, safety and wellbeing of ‘workers’ in normal times, RACO highlights that the protections offered to employees should also apply to military personnel in predictable and foreseen circumstances. The WTD must be implemented into the Defence Forces as a matter of urgency. Where derogations and exemptions are substantively deemed necessary, agreed collective arrangements with the representative association should be developed as a matter of urgency.

⁶ As noted in EUROMIL’s letter to the Commissioner of Employment, Social Affairs, Skills and Labour Mobility Commissioner Special Adviser for the European Pillar of Social Rights (08 Feb17).

⁷ These include the Minimum Notice & Terms of Employment Acts (1973 – 2005), Unfair Dismissals Acts (1977 – 2007), Employment Equality Acts 1998 – 2015.