



European
Social
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON THE MERITS

Adoption: 21 October 2020

Notification: 17 November 2020

Publicity: 18 March 2021

**European Organisation of Military Associations and Trade Unions (EUROMIL)
v. Ireland**

Complaint No.164/2018

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 316th session in the following composition:

Giuseppe PALMISANO, President
François VANDAMME, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 21 October 2020,

On the basis of the report presented by Raul CANOSA USERA,

Delivers the following decision, adopted on this date:

PROCEDURE

1. The complaint lodged by EUROMIL was registered on 23 April 2018.
2. The European Organisation of Military Associations and Trade Unions ("EUROMIL") alleges that the situation in Ireland is in violation of Articles 1§2 and 26§2 of the revised European Social Charter ("the Charter") on the basis there is no provision in Irish law enabling members of the Irish Defence Forces to discharge from the armed forces on grounds of conscientious objection.
3. On 16 October 2018, referring to Article 6 of the 1995 Protocol providing for a system of collective complaints ("the Protocol") the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 10 January 2019.
5. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol and the States that had made a declaration in accordance with Article D§2 of the Charter, to submit any observations they might wish to make on the merits of the complaint by 10 January 2019.
6. In application of Article 7§2 of the Protocol, the Committee invited the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 10 January 2019.
7. On 11 December 2018, the Government asked for an extension to the deadline for submitting its submissions on the merits. The President of the Committee extended this deadline until 8 February 2019. On 6 February 2019 the Government requested and was granted a further extension of the deadline until 13 February 2019 for its submissions on the merits. The Government's submissions on the merits were registered on 13 February 2019.
8. The deadline set for EUROMIL's response to the Government's submissions on the merits was 24 April 2019. EUROMIL's response was registered on 11 April 2019.
9. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 7 June 2019. The Government's further response was registered on 7 June 2019.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

10. EUROMIL asks the Committee to find that the situation in Ireland constitutes a violation of Articles 1§2 and 26§2 of the Charter because there is no provision in Irish law enabling members of the Irish Defence Forces to discharge from the armed forces on grounds of conscientious objection. According to EUROMIL, the failure to regulate such discharge is contrary to the Charter, as this results in a situation where there are no discharge mechanisms for personnel who no longer wish to serve.

B – The respondent Government

11. The Government asks the Committee to dismiss all the allegations submitted by EUROMIL and to declare the complaint unfounded.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Irish Constitution

12. Article 28.8.3 provides as follows:

“Nothing in this Constitution other than Article 15.5.2° shall be invoked to invalidate any law enacted by the *Oireachtas* [the houses of parliament] which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this subsection "time of war" includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the *Oireachtas* shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and "time of war or armed rebellion" includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the *Oireachtas* shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist.”

B – Defence Act 1954

13. The 1954 Defence Act makes a distinction between the rules applicable to officers, contained in Chapter I of Part IV, and the rules to be applicable to “men”, contained in Chapter II of Part IV of the Act (Sections 53 to 84). The present complaint only refer to the rules applicable to the second category of members of the Defence Forces. Among the “men”, there are those enlisted for General Service, for which the initial service period is of five years. For Apprentices (as well as for officers), the period is of twelve years. Section 53 of the Act regulates this initial period of enlistment of 12 years. Sections 63 to 68 of the Act set out conditions of engagement, re-engagement and continuance in service.

14. Section 53 of the 1954 Defence Act provides that any person may be enlisted as a man of the Permanent Defence Force for service during a fixed period and Section 54 provides for enlistment for service during a period of emergency. Neither provision imposes any statutory obligation for enlistment.

15. Sections 73 to 77 of the Act provide for discharge from the Permanent Defence Force otherwise than on completion of service and Sections 80 to 84 of the Act contain general provisions as to discharge. Under Section 81(2) of the Acts, the Minister may make regulations as to the manner in which and the persons by whom the discharge of members is to be carried out.

16. Section 75 of the Act provides that any member of the Permanent Defence Force is entitled, except during a period of emergency, to her/his discharge from the Permanent Defence Force by purchase as may be prescribed. The scale of payment pertains to whether the member of the Permanent Defence Force is line class or technical class and to the period of service. The relevant categories of payment are set out at paragraph 61 of the Regulations (see below under C). Discharge by purchase only arises during the initial period of enlistment of 12 years and is not necessary if a member of the Permanent Defence Force chooses to re-engage after 12 years of service.

17. The meaning of the term “a period of emergency” to which Section 75(1) on discharge by purchase refers is set out at Section 4 of the 1954 Act. Under Section 4(1), the Government may declare that a state of emergency exists. Whenever an order is made by the Government under Section 4(1), then, so long as such order remains in force, a “period of emergency” shall be deemed for the purpose of the Act to exist (see Section 4(3)). Section 4(4) requires that every such order must be laid before the Houses of Parliament and published in the official journal. Section 4(5) provides that the Houses of Parliament must be summoned to meet as conveniently may be, but in any event not later than 21 days after the order is made.

C – The Defence Force Regulations

18. Under paragraph 60(1)(a) of the Regulations, a Certificate of Service is issued and is sent to the member of the Permanent Defence Force on the date on which his/her service terminates. Paragraph 58 of the Regulations accordingly contains a table which sets out the various reasons for which a member of the Permanent Defence Force may be discharged and the wording to be used in recording the reason for discharge. Paragraph 61 states the scale of payments for discharge by purchase.

19. In relation to periods of emergency, according to paragraph 61 of the Regulations,

(1) Where a man of the Permanent Defence Force at any time within three months after the date of his attestation pays to the Minister the sum of thirty euro (€30) and applies to be discharged, and such payment and application are not made during a period of emergency, such man shall be discharged from the Permanent Defence Force with all convenient speed.

(2) Where a period of emergency commences within three months after the date of at-testation of a man of the Permanent Defence Force, and such man within three months after the termination of the period of emergency pays to the Minister the sum of thirty euro (€30) applies to be discharged, such man shall be discharged from the Permanent Defence Force with all convenient speed.

(...)

RELEVANT INTERNATIONAL MATERIALS

A – The Council of Europe

1. Committee of Ministers

20. The Committee of Ministers (CM) adopted Recommendation No. R(87)8 in 1987 asking member states to introduce suitable procedures for the examination of applications for conscientious objector status.

21. In Recommendation CM/Rec(2010)4 on human rights of members of the armed forces, the CM states that members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9, paragraph 2 of the European Convention of Human Rights. Particularly, the CM recalled that:

“42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.”

2. Parliamentary Assembly of the Council of Europe (PACE)

22. The right to conscientious objection has been endorsed by the Council of Europe ever since 1967 when a first Resolution (Resolution 337(1967)) on the topic was adopted by the Parliamentary Assembly. In its Recommendation 816 (1977), the Parliamentary Assembly stated the right of conscientious objection to military service. The recognition of this right later became requirement for states seeking accession to the organisation. Armenia, Azerbaijan and Turkey are the only Council of Europe member states which have not recognised the right of conscientious objection.

23. In its Recommendation 1742 (2006), the PACE observed that “with the ending of conscription and the professionalisation of the armed forces in several countries, at a time when armies in many member states are seeing action in the same theatres of operation, the Assembly resolutely promotes shared principles to be used to guide army action and govern the conditions under which they discharge their duties. Members of the armed forces cannot be expected to respect humanitarian law and human rights in their operations unless respect for human rights is guaranteed within the army ranks. It is therefore essential that the Council of Europe’s efforts to lay down

guidelines on human rights protection within the armed forces be accompanied by a policy in the member states of heightening human rights awareness among their own military personnel.” In particular, the PACE enounced the need to “introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted the status of conscientious objector”.

3. European Court of Human Rights (ECtHR)

24. Article 9 of the European Convention on Human Rights of 4 November 1950 provides:

Article 9

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

25. Article 9 does not explicitly mention the right to conscientious objection, whether in the military or civilian sphere. Nevertheless, the Court has ruled that the safeguards of Article 9 apply, in principle, to opposition to military service. Most of the Court's case law refers to cases of compulsory military service and conscientious objectors on religious grounds, where no alternative civilian service was provided for by law, and that this is in violation of Article 9 (*Bayatyan v Armenia*, GC, application 23459/03, judgment of 7 July 2001; *Enver Aydemir v Turkey*, GC, application 26012/11, judgment of 7 September 2016). There is no case law concerning professional military personnel and their discharge on the basis of their conscientious objection.

B – The United Nations

1. UN Human Rights Council

26. The Human Rights Council, and previously the Commission on Human Rights, have recognised the right of everyone to conscientious objection 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 (see in this respect, among others, Human Rights Council Resolution 20/2 of 5 July 2012 and Commission on Human Rights resolutions 2004/35 of 19 April 2004 and 1998/77 of 22 April 1998). In this last resolution 1998/77, the Commission on Human Rights considered that:

“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”

2. International Covenant on Civil and Political Rights (ICCPR) and the Human Rights Committee

27. In its General Comment No. 22 concerning Article 18 of the ICCPR, the Human Rights Committee stated that:

“The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief (para. 11).

28. In *Yoon and al. v. Republic of Korea*, the Human Rights Committee considered that conscientious objection was a right under Article 18 of the Covenant. In the same case, however, the Human Rights Committee also considered in respect of Article 8, paragraph 3 of the Covenant that the term “forced or compulsory labour” shall not include “[...] (ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors [...]”.

29. The Human Rights Committee further addressed the issue of conscientious objection for persons serving in the armed forces in its concluding observations on a State report by Spain in which it stated that it:

“[...] is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22. The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces. (CCPR/C/79/Add.61, paras. 15 and 20)”.

THE LAW

PRELIMINARY CONSIDERATIONS

30. The Committee notes that EUROMIL in its complaint invokes two substantive provisions of the Charter, Article 1§2 and Article 26§2. It further notes that the complaint specifically concerns the situation of members of the Irish Defence Forces represented by the Permanent Defence Force Other Ranks Representative Association (PDFORRA). The Committee understands this to concern the category of military personnel covered by Chapter II of the Defence Act, 1954, i.e. “Men”.

31. As regards Article 1§2 of the Charter, EUROMIL claims that the lack of an explicit provision in domestic law providing for discharge from the military on grounds of conscientious objection constitutes a violation of the Charter. Subsidiarily, EUROMIL asserts that the possibility of discharge by purchase is not a satisfactory solution as a person who wishes to discharge may not have the necessary financial means to do so and as discharge may in any event be refused for a period of up to 90 days. Furthermore, EUROMIL points out that discharge by purchase is curtailed during periods of emergency.

32. Accordingly the Committee considers that its called upon to examine firstly whether Article 1§2 entails a requirement for domestic law to explicitly provide for discharge from the military on grounds of conscientious objection, and secondly, as the case may be, whether the conditions and restrictions attached to discharge by purchase, including during a state of emergency, are so onerous as to constitute an undue interference with the right to freely choose and leave an occupation as guaranteed by Article 1§2 of the Charter.

33. With respect to Article 26§2 of the Charter, EUROMIL alleges that the lack of regulatory provision for discharge on grounds of conscientious objection in the Irish Defence Act is *per se* a basis for possible harassment at work of military personnel and amounts to inadequate protection of the dignity of the person contrary to the Charter. According to EUROMIL, it unnecessarily exposes members of the Irish Defence Forces to accusations of cowardice and ridicule and as such does not protect the dignity of the person at work. However, EUROMIL provides no specific explanation or information as to whether and how this situation exists in practice nor is any particular case brought to the attention of the Committee. The Government states that workers’ privacy is protected and it is not made public when or why a member of the military forces discharges from their service.

34. The Committee recalls that Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. It imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular in situations where harassment is likely to occur. However, the Committee notes that is not demonstrated how and in which way Article 26§2 of the Charter could be affected in the specific case, and how the lack of possible registration of the discharge on grounds of conscientious objection, as opposed to not

registering the reasons, amounts to inadequate protection of the dignity of the person contrary to the Charter.

35. The Committee decides therefore to examine this complaint exclusively from the angle of Article 1§2 of the Charter while considering that the contested situation does not fall within the scope of Article 26§2 of the Charter.

ALLEGED VIOLATION OF ARTICLE 1§2 OF THE CHARTER

36. Article 1§2 of the Charter reads as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

(...)

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

(...)”

A – Arguments of the parties

1. The complainant organisation

37. EUROMIL claims that conscientious objection is a human right. The right to conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion. Moreover, the concept of voluntary labour should permit the termination of the employment relationship at will by the worker, including where the worker is military personnel which conscientiously objects to service. According to EUROMIL, by failing to include in legislation a reference to conscientious objection as a ground for discharge for military personnel, it is not demonstrated that personnel of the defence forces in Ireland can leave the defence forces in case they do not wish to serve any more. The lack of this discharge ground may inhibit the discharge of personnel who no longer wish to serve for religious reasons and is therefore contrary to Article 1§2 of the Charter, which protects the freedom to choose an occupation and thus also to leave it.

38. EUROMIL recognises that under Irish law there is a right to discharge by purchase, but it points out that this is curtailed during periods of emergency. Moreover, this right to discharge is curtailed even in peacetime. Indeed, EUROMIL considers that the Government failed to address in their response that, despite an entitlement to discharge through purchase, this entitlement can be curtailed in peacetime for periods of up to 90 days.

39. Moreover, in certain circumstances military personnel may not be in a position to purchase their discharge for financial reasons. As no provision is made for conscientious objection, no alternative employment can be chosen in lieu of military service even in circumstances where genuine conscientious objection may exist. In such circumstances, EUROMIL considers that a board should be set up designed to assess the *bona fides* of applicants for conscientious objection. EUROMIL recalls that in 2010, the Committee of Ministers of the Council of Europe adopted a recommendation, which states that “professional members of the armed forces should be able to leave the armed forces for reasons of conscience”.

40. EUROMIL contests the statement of the Government according to which there is no need to assess conscientious objection as there is no compulsory military service in Ireland. According to EUROMIL, the ability to conscientiously object to service should not to be confined to conscription or compulsory service.

2. The respondent Government

41. The respondent Government rejects the assertions made by EUROMIL in their entirety. It emphasises that personnel enter military service voluntarily and any member of the Permanent Defence Forces is free to seek his or her discharge in accordance with the 1954 Defence Act and the Defence Force Regulations.

42. The Government states that the law provides for an “exit mechanism” for personnel who no longer wish to serve, whether for moral reasons or otherwise. Insofar as the complaint impugns provisions under Irish law pertaining to “periods of emergency”, the Government recalls that the Charter expressly recognises the entitlement of States Parties to derogate from its provisions in time of war or public emergency. In any event, enlistment remains voluntary under Irish law during such periods.

43. The Government further states that it is far from self-evident how a violation of Article 1§2 of the Charter can arise in circumstances where enlistment in the military is voluntary and personnel are entitled to seek their discharge in accordance with the Act and Regulations.

44. According to the Government, the voluntary nature of service in the Permanent Defence Forces obviates the necessity to provide explicitly for conscientious objection. Moreover, while no specific provision is made for conscientious objectors, it is open to any member of the Permanent Defence Forces for this or any other reason not specified in the Act to seek discharge by purchase should he/she feel that he/she can no longer render military service in accordance with Section 85 of the 1954 Act.

45. Furthermore, the Government states that the statutory provisions on discharge from service ensure that members of the military are not compelled to remain in service when doing so would require them to act against their conscience. Accordingly, it is unnecessary to provide specifically for discharge by reason of conscientious objection. Moreover, the order for discharge by purchase is required by the 1954 Act to be processed with “all convenient speed.” It is clear from the foregoing that every person who enters the military does so of their own free will and any member of the military is

free to avail themselves of Section 75 of the 1954 Act to leave the military, irrespective of reasons.

46. The Government also recalls that workers having agreed to a fixed term contractual obligation must respect the relevant regulation of the notice period of 90 days and the order for discharge by purchase is required by the Act to be processed with “all convenient speed.” It is general practice to facilitate discharge as quickly as possible. However, certain roles (involving particular skillsets and technical qualifications) might require delay in order to facilitate adequate replacement. This does not denote compulsory service and the Government asserts that this period is a proportionate approach to protecting the needs of the service and that it does not reach the threshold of a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

47. The Government considers that the complaint appears to impugn provisions of the 1954 Act which allow certain exceptions to the regime for discharge by purchase in periods of emergency. However, these provisions must be read in light of the Act as a whole and in its constitutional context. Article 28.3.3 of the Constitution sets out specific constitutional provisions on laws enacted for periods of emergency. Section 4 of the Act defines the procedure to be followed in declaring a state of emergency such as to create a period of emergency. Section 54 specifically provides for enlistment to the military (still in a voluntary context) during periods of emergency and Section 71(1) provides that every person enlisted under Section 54 shall upon expiration of the period of emergency be discharged from military service with all convenient speed. Therefore, such situations are clearly prescribed by law and are limited in nature. They are proportionate to the aim being pursued and are entirely consistent with Article F of the Charter.

B – Assessment of the Committee

General remarks

48. The Committee recalls that Article 1§2 of the Charter implies that all forms of forced or compulsory labour must be prohibited. The States Parties to the Charter who have accepted this Article undertake “to protect effectively the right of the worker to earn his living in an occupation freely entered upon”. According to the Committee’s interpretation of this provision, the right to earn one’s living through an occupation freely entered upon entails the elimination of all forms of discrimination in employment and the prohibition of forced labour.

49. The Committee observes that conscientious objection to military service is not explicitly addressed in the main instruments of international human rights law. Nevertheless, the right to conscientious objection has been recognised as a fundamental aspect of the freedom of thought, conscience and religion, as laid down in Article 18 of the Universal Declaration of Human Rights and in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). The European Court of Human Rights has ruled that the safeguards of Article 9 of the European Convention of Human Rights apply, in principle, to objection to military service, when it is motivated by a serious, insuperable conflict between compulsory military service and an

individual's conscience or her/his sincere and deeply-held religious or other convictions.

50. In 1987, the Committee of Ministers (CM) of the Council of Europe adopted Recommendation R(87)8 and in 2010, it adopted Recommendation CM/Rec(2010)4. In the former, the CM set out minimum standards on conscientious objection and invites States to examine applications for conscientious objector status. In the latter, it recommends that States recognise the right to conscientious objection in their domestic law. This right is now recognised in the vast majority of the 47 member States.

51. The Committee has previously considered that Article 1§2 may be infringed in cases related to the ability of military personnel to discharge from the service, even if they entered the occupation freely in the first place. For example, if career army officers who have received periods of training are required to complete a term of compulsory service that is too long, this could be regarded as incompatible with the freedom to choose and leave an occupation under Article 1§2. For example, in *FIDH v. Greece*, the twenty-five year period required was considered to be excessive and therefore contrary to Article 1§2 of the Charter (*International Federation of Human Rights Leagues (FIDH) v. Greece*, Complaint No. 7/2000, decision on the merits of 5 December 2000, §21).

As to the lack of regulation

52. However, the situation addressed by the present complaint is different. EUROMIL claims that the lack of an explicit provision in domestic law providing for discharge from the military on grounds of conscientious objection amounts *per se* to a violation of Article 1§2 of the Charter.

53. The Committee emphasises that the right to conscientious objection is not as such guaranteed by the Charter under Article 1§2. Moreover, the Charter does not entail a requirement for domestic law to explicitly provide for discharge from the military on these grounds unless the absence of such requirement effectively prevents any discharge from the military. Therefore, it considers that no issues arise under the Charter in this respect.

As to the discharge by purchase

54. The Committee further observes that EUROMIL also claims that the conditions and restrictions attached to discharge by purchase from Defence Forces in Ireland, including during a state emergency, constitute an undue interference with the right to freely choose and leave an occupation as guaranteed by Article 1§2. According to Irish law, personnel who, after having joined the armed forces, become conscientious objectors can discharge from the military service freely after a certain period of service (of 5 or 12 years depending on the category of personnel) or by purchase at any moment.

55. In the present case, the Committee will assess the conditions and restrictions applicable to the discharge by purchase from the military service in Ireland. It will examine whether the restrictions imposed are compatible with the Charter, particularly the reasonableness of the costs of purchase and of the 90-day period that may be imposed before a discharge becomes effective. Finally, the restrictions which may arise during periods of emergency will be assessed.

56. As regards the costs, EUROMIL claims that military personnel may not have the financial means to discharge by purchase. The Committee observes that, according to the Defence Force Regulations, the maximum amount which may be requested to be paid depending on training and education to the category of military personnel to which this complaint refers ("Men") is up to a maximum of €6,345 and can be as little as €50 in certain cases. The Committee recalls that any fees/costs to be repaid on early termination of service must be proportionate (Conclusions 2012, Article 1§2, France). In the present situation, taking into account the margin of appreciation left to the State, as well as the fact that the amount to be repaid can vary from €50 to €6,345 depending on training and service, the Committee considers that the amounts to be repaid are not unreasonable and, therefore, that the situation satisfies the requirements of Article 1§2 of the Charter in this respect.

57. With respect to the *90-day period*, the Committee notes that under the Irish Defence Force Regulations A10 (paragraph 61(1)) there may be a period of up to three months from the date of the request to discharge by purchase and until the effective end of the service. EUROMIL alleges that this curtails the freedom of military personnel. Moreover, as there is no specific regulation for conscientious objectors, they cannot be placed in other non-military duties pending their request. The Government states that the order for discharge by purchase is required by the Defence Forces Act to be processed with "all convenient speed" and that it is normal for any worker to respect a certain notice period.

58. The Committee points out that while the Charter provides for a right of workers to a reasonable period of notice (Article 4§4), it does not regulate the length of periods of notice that may be required of workers. However, it follows from Article 1§2 that such periods must not be so long as to constitute an undue interference with the right to freely choose and leave an occupation. While the Committee considers that 90 days is rather long, this period cannot be regarded as excessive in the context of a freely concluded contract with the Defence Forces. The Committee considers that the States have a wide margin of appreciation in this particular context. The Committee further observes that the 90-day period is an absolute maximum which could be shorter as a request for discharge is to be processed with "all convenient speed".

59. On this basis, the Committee considers that the conditions for discharge by purchase, both in terms of costs and of the length of the period before the discharge becomes effective are reasonable and thus compatible with Article 1§2 of the Charter.

As to periods of emergency

60. Finally, EUROMIL alleges that in a period of emergency it is not possible to discharge from the Defence Forces. Indeed, discharge by purchase is only available outside of periods of emergency. The Government takes the view that the regulation of periods of emergency under domestic law respects the requirements under Article F of the Charter.

61. The Committee recalls that if a State invokes Article F of the Charter “in time of war or public emergency”, this would allow that State to take measures derogating from its obligations to the extent strictly required by the exigencies of the situation. The Committee further recalls that even if Article F is not invoked during an emergency, Article G of the Charter permits restrictions which are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

62. The Committee observes that periods of emergency are regulated in the Constitution. Moreover, Section 54 of the Defence Act specifically provides for enlistment to the military (still in a voluntary context) during periods of emergency and Section 71(1) provides that every person enlisted under Section 54 shall upon expiration of the period of emergency be discharged from military service with all convenient speed. The Committee considers that the Defence Forces can be regarded as an essential service and that during periods of emergency States enjoy a wide margin of appreciation with respect to their operation.

63. In the light of the above considerations and having regard to the fact that the restriction imposed on discharge from the Defence Forces during a period of emergency is prescribed by law with sufficient clarity, that it pursues a legitimate aim and can be deemed to be necessary in a democratic society for reasons of national security, the Committee considers that the situation is compatible with the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- by 13 votes to one, that there is no violation of Article 1§2 of the Charter.



Raúl CANOSA USERA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary